Supreme Court, U.S.
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No.

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College, Johnson, Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

PETITION FOR WRIT OF CERTIORARI

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175 PP

Federal Questions to be Decided by the

Supreme Court of the United States

Should students be punished for completing their assigned scholastic requirements, said punishment the antithesis of traditionally nominal and actual student role behavior,said punishment a total deconstruction of the historic, meritorious Academic Due Process in America?Most importantly, should the liberties and restraints, rights and responsibilities,property and intellectual possessions of all scholars,teacher-students and by extension all citizens, be substantially cancelled and voided by the self-serving,arbitrary requirements of rogue scholars,their incestuously associated rogue educational administrators and mercenary, corrupt legal advisors??? Should an ersatz, fraudulent "academic due process" now proceed de jure as well as de facto, in that the Vermont Supreme Court has expanded the "HOROWITZ V MISSOURI" ruling of two decades ago, equating mere academic jurisdiction with traditional esoteric,academic expertise? Should the state courts in Vermont be allowed

to rely on the prerogatives of academic expertise, set forth succinctly limited in "HOROWITZ V MISSOURI", to such a pro-forma,talismanic extent that there is now no check on the excesses apparent in the mis-labels within this petition,thus returning academic prerogative to the 19th century definition of schoolmaster rights and privileges?Should the Vermont Court rulings based on "HORO-WITZ" substantially undermine not just the lim-its of authority explicit in "HOROWITZ",but overturn in the main liberties, restrains,rights,responsibilities,intellect-ual and real property possessions of scholars,teacher-students and by extension,all citizens,found in the U.S. Supreme Court decisions rendered in "KEYESHIAN V REGENTS", "TINKER V DES MOINES","GOSS V LOPEZ", "REGENTS V BAKKE",as well as the "HOROWITZ" decision itself?Should the body of contemporary law flowing from these Supreme Court decisions,minimally intruding into the profession of teaching to ensure within the teaching profession the Constitutional Rights of all,in this case Rights found in US Constiution,Amendments 1,4,5,6,8,

13 and 14; Article I,Section 9; 20 USC 1232 g.,h.;34 FRC 99 et al; and 20 USC 1097; be now suborned to the "academic pre-rogatives" of scholastic scoundrels and their accessory-to-and-after-the-fact legal/political allies?.In the wake of "TINKER V DES MOINES",this petitioner's career was mortally exposed to the Constitutionally mandated risks historically and traditionally bred on the academic campus.This petitioner,hereafter teacher-student, begs the Court to reverse the Vermont decisions to trial, and with this reversal substantially define the American Academic Due Process afforded the American Society by the Basic Documents,restore Constitutional freedoms to the profession of teaching,removing simultaneously a de novo Constitutional exemption,and its concommitant terror,granted by the Vermont Courts to a class of techno-bureaucrats now legally self- empowered under "HOROWITZ" to punish students who completed their homework.learned their lessons and then had the strength to act Constitutionally consistent with their new found knowledge.Should

these students disproportionately bear the risks and liabilities of education while their teachers,constitutional barbarians on and about the Johnson State College campus,avoid all risks and liabilities, using the students as pawns to avoid a balanced,fair,disputatious Academic Due Process,a process Constitutionally strewn with career risks and rewards for all parties equally,an academic due process distributing these risks and rewards to faculty as well as student careers?

The Vermont Courts' decisions have substantially defined this "ersatz" academic due process as genuine Academic Due Process.

What does the Constitution say?

Signed this day, the 18th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

Reformatted 12/7/94

John Lucas

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"Board of Curators of the University of Missouri v Horowitz", 435 US 78 (1978)

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"Klein Independent School District v Mattox", C.A.5 (Tex) 830 F2d 576(1987)

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"Matthews v Eldridge", 424 US 319 (1976)

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"Regents of the University of California v Bakke", 438 US 265, 311-12, 319 n 52, 404(1978)

"Tarkla v Cunningham", 917 F.2d 890 (5th Cir 1990)

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

Bill of Attainder, Ex-post Facto Legislation Clause, Art 1:Sect 9;

Freedom of Speech, Peaceful Assembly, Redress of Grievances Clauses, 1st Amendment; Unreasonable Search and Seizure Clause, 4th Amendment; Life, Liberty and Property Due Process Clause, 5th Amendment;6th Amendment (Complete);Cruel and Unsual Punishnent Clause, 8th Amendment;13th Amendment (Complete);Due Process Clause, 14th Amendment; All of the United States Constitution, as amended

20 USC 1232 g, The Family Educational Rights and Privacy Act of 1974,(FERPA), aka The Buckley Amendment

34 Code of Federal Regulation 99; FERPA Regulations

120 Congressional Record 39, 892 (1974)

20 USC 1232 h, Protection of Pupil Rights

Chapter 1, Article 1: [All men born free, their natural rights, slavery prohibited], Vermont Constitution 1777, 1786

1 VSA 315-320 The Vermont Access to Public Documents Laws

16 VSA 12 Oaths of Affirmation (for professional teachers) 1968

16 VSA 164 (5), 1692, 1695, 1697, 1792 (a), 1751, and Chapter 59, Vermont Statutes authorizing the Training and Licensing of Teachers (Educators)

Vermont Department of Education Regulations 5100 through 5900 (July 1991)

Vermont Department of Education Regulations 4300 (Disciplinary Actions) Auth 16 VSA 1162

Vermont Attorney General Report April 30, 1993, Re: Spaulding High School Internal Processes

New England Association of Schools and Colleges "Standards for Accreditation", Commission on Institutions of Higher Education 1992

Johnson State College Department of Education Student Teacher Handbook 1991-92

Johnson State College Academic Policies (ACA designation) 1991

ACA 28.2; Appeal of Academic Policies

ACA 32; Academic Dishonesty

ACA 13; Grading System

ACA 6; Graduate Registration

ACA 16; Repeat Course Option

ACA 3.1; Course Numbering

STL 2.1; Student Code of Conduct 1991-92

ACA 53.1; Early Warning (Poor Academic Performance)

Johnson State College AFT Teachers' Contract September 1991

Barre NEA Teachers Contract 1990-1991

Barre NEA Code of Ethics (NEA Code of Ethics 1974).

"Academic Freedom and Tenure; A Handbook of the American Association of University Professors", ed; Louis Joughin, The University of Wisconsin Press, Madison, Milwaukee and London 1967

"Academic Freedom in Our Time", Robert M. MacIver, Guardian Press, NY 1967

"Joint Statement on Rights and Freedoms of Students", American Association of University Professors, 1967,1990,1991,1992

"Statement on Professional Ethics", American Association of University Professors, 1987

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

Reference to Other Reports in the Case

22 Oct 91 Johnson State College Department of Education (JSCED) "English Competency" Note

9 Apr 92 JSCED Expulsion Letter

10 Apr 92 Spaulding High School/JSCED internal suspension memo

28 May 92 Johnson State College (JSC) Graduate Committee "memo"

2 June 92 JSC Graduate Committee "Decision"

17 July 92 Vt. Attorney General referral to VSCC, Defendant Carpenter

16/23 Mar 93 JSC "Academic Dean" appeal decision

30 Apr 93 Vt. Attorney General Report:SHS

11 June 93 JSC President's appeal decision

5 Oct 93 Vt Dept of Education opinion:16VSA12

5 Oct 93 Vt Attorney General's response re: Referral of 17 July 92 to Carpenter/VSCC

Jurisdictional Grounds for Supreme Court Review

Defendants were granted Summary Judgement Motion and Order in their favor dismissing Teacher-student's 1 VSA 315-320 suit, in the Superior Court, Lamoille County, Hyde Park, Vermont, on 29 Nov 1993.

This action was appealed to the Vermont Supreme Court, Montpelier, Vermont, and was upheld, in favor of Defendants, 15 July 1994.

Motion to Re-argue was denied teacher-student 23 Aug 1994.

Teacher student cites the United States Constitution, Article III, Section 2: Appellate function of the Supreme Court in all Cases of Law and Equity, in that the Vermont Supreme Court, as the Court of Last Resort, has decided federal questions in conflict with applicable decisions of the Supreme Court, as set forth in the questions presented for review by the teacher-student, now before the Supreme Court.

Statement of Facts of the Case

Teacher-student entered the Vermont State College Corporation's (VSCC) Johnson State College (JSC) Masters of Education-Secondary (high school) licensing program in the Fall, 1991. Specifically formatted to convert undergraduate degree holders without formal education classes into licensed M.A. teachers, this program required 39 post-graduate credits, including 6 compulsory credits as a Graduate Intern student teacher.

This teacher-student completed 18 graduate credits in his first semester, a double-loaded period,with a 3.78 Grade Point Average(GPA) out of a maximum available 4.00.,with only two (2) failed "English Competency Tests" and a "B-" marring a perfect score.(Lamoille Superior Court, hereafter LaC, Exhibit:10/19/93 Return to JSC: Non-Option)English Competency is a Vermont State minimum requirement for all teaching licenses, a pre-requisite to student teaching placement and graduation as a Masters Degree holder(LaC Exhibit JSC Student Teaching Handbook. hereafter STHB). The 2 Oct 91 JSC Department of Education

(JSCED) examination for English Competency was noted as a failure, not for traditional grammar, syntax, spelling ...etc, criteria, but rather for an imprecise "...personal educational philosophy...", the single topic afforded GRADUATE students in this exam. (Undergraduates were not so limited; 1992 and successive year graduate students are not required to complete English Competency requirements by expounding on their "Personal Educational Philosophy". Competency is now based on writing samples from other sources). Teacher-student's "replacement exam", on 25 Oct 91, was constructed by the author to demonstrate purposefully stretched English constructions, a "politically incorrect" philosophy, and a test of the intent of this "English" exam. The bottom of this second exam noted a protest grievance of the "...dishonest and academically fraudulent..." presentation of a philosophy screening exam disguised as an "English Competency" test. This grievance disappeared with the second exam after being turned into the JSCED administrative office; the "graders" of either

exam are unknown JSC and/or JSCED educators (LaC 10/19/93 Exhibit: Academic Prerogative). Despite a lack of demonstrated and approved "English Language Competency", teacher-student was hurriedly assigned to Spaulding High School, Barre, Vermont, beginning as a Graduate Intern Student Teacher on 20 Jan 1992. Supposedly interned for a 16 week period to end 8 May 92 (end of JSC Spring semester), teacher-student began, on 27 Jan 92, what is most aptly and legally defined as a 15 week uncompensated Graduate Teaching Assistant experience, terminated outside of legal and academic process in the summer of 1992 (15 May-6 July 1992).(LaC Exhibits above)The first 10 weeks of the teaching experience was unremarkable, save for 1) the gross lack of mentorship by JSC and SHS paid monitors and 2) JSC supervisor Dr. Marilyn Page's cryptic announcement, 19 Mar 92, that this particular "internship"failed, by design, to meet "Vermont Standards", and thus teacher-student was failed in his "internship" although,if he was amenable, he could continue "student-teaching", as she, Dr. Page, was not removing the Graduate

Teaching Assistant from the "program" at this time .(LaC: Accdemic Prerogative)

Only at the "collaborative grading" meetings regarding 409 U.S. History (B), the class that the teacher-student had, as a Graduate Assistant teacher,essentially taught for the entire grading period in question, was there any controversy raised regarding the teacher-student's professional capacities.

At this point, the "regular classroom teacher", one Dr. Richard Wilgoren, returned to over-view the Graduate Assistant's grades for the 3rd quarter, announcing suddenly and unexpec-tedly that the grades were "...too high..";

there were "...15 incomplete homework assign-ments..." which would factor downward the Grad-uate Assistant's empirical data, empirical grading sheets which had provided for all homework assignments, as well as all other student measure, within this 3rd quarter.

Clearly fabricated by Dr. Wilgoren, the "15 incomplete assignments" were orally protested, for an 11 day period, by the teacher-student to his immediate SHS supervisor, Richard Lussier, his JSC interim field supervisor/advisor, Dr. Herbert Tilley, and to Dr. Wilgoren himself.

Richard Lussier failed to indicate over the 11 days what the next step in grievance would have been at SHS.

Dr. Tilley agreed, on 29 Mar 92, that the fabrications were no less than academic fraud, and sent the teacher-student, without JSC supervisory intervention, back to "...keep good records..." and "...work the problem out inside the system...".Dr. Wilgoren responded to teacher-student com-plaints by raising the number of "incomplete assignments" to 19, on 29 Mar 92, rationaliz-ing, on 1 April 92, this method of marking as the students' "...low socio-economic status..." and " ...unstable family emotional background..." rewards (one student was marked down for having four (4) step-mothers, appar-ently some number too many for Richard Wilgoren).

The 2 Apr 92 published student report card grades reflected substantially the "19 incomplete assignments" in both the history students' homework grades and students' overall U.S. History marks.(LaC: Academic Prerogative). The failure of any JSC or SHS mentor or supervisor to intervene or explain the "19 assignments", and the publication of public reports of deficiencies based on these fabrications, reports which the teacher-student, as co-grader, bears co- responsibility as a collaborative grader,compelled the teacher-student to file written statements regarding this "grading incident".(LaC Civil Summons 26 Mar 93)

A letter was composed to Wilgoren, with copies to Lussier, Tilley and Wilgoren's department head, Joseph Maiola, stating clearly that the "19 assignments" "...did not exist in fact...", urging that the grades be returned to normative, empirical levels.Each parent of each student in the U.S. History class received from the teacher-student a second,different letter, noting that a "...mistake had occurred in the

grading.." regarding their student,but nothing more.(LaC: Original Summons)

Letters to the parents were mailed, USPS, early AM 6 Apr 92.Lussier received his copy of the grievance letter later in the morning, 6 Apr 92, hand-delivered by teacher-student with a proviso that Wilgoren would not get his original if Lussier found alternative redress. Lussier did not, and at 2:35 PM, as promised, teacher-student hand delivered to Wilgoren the grievance letter as well as copies of notes mailed to the affected parents and students. A similar document package was deposited with the SHS office for Maiola, as well as with Dr. Tilley that PM at JSC, who refused the documents, compelling the teacher-student to deposit the papers in the mail-box of his nominal, but allegedly long absent official field supervisor, now Dr. Marilyn Page. Pursuant phone consultations with Dr. Page, evening of 6 April 92, teacher-student arrived at SHS, morning of 7 April 92, and was sent home by Lussier at the alleged direction of SHS Principal Patterson. Prior to leaving the SHS

building, teacher-student asked Lussier for both an oral, and then when refused, a written reason for the dismissal. Lussier responded to the latter by stating that a written notice explaining the "suspension" would be "...forthcoming."

No such written "suspension" notice, transmitted to this teacher-student, exists!!!

The action is a "leave of absence" until the "internal memo" of suspension is written, 10 Apr 92, backreferenced to match actions of 7 Apr 92.The clock runs from 7 Apr 92.

Notified by Dr. Page 12 hours prior, teacher-student attended, on 9 Apr 92, at JSCED, what must be described as a classic, "Star Chamber" assault upon his actions. Present were Drs Tilley and Page,as well as JSCED Department Chairwoman Carol Story.These three acted first as grand inquisitors seeking charging data, and then as "hindsight supervisors", apparently finding the teacher-student deficient based on his failure to heed official advice and professional judgement now hastily rendered, ex-post facto.

Constitutional Crisis #1: Legal suspension from either SHS or JSCED at this point triggers VtDoE 4300 regulations.4300 regs mandate full bore, quasi-judicial process, not just "...some sort of hearing..." per "Goss v Lopez", regardless of behavior if the suspension occurs outside of the 4300 regulations governing short, 10 day or less suspensions. A "short" suspension, of less than 10 days, triggers minimal hearing, notice of defect, rebuttal opportunity, and simple evidence of defect, per "Goss v Lopez", with the hearing to precede the actual suspension, written notice to student to follow.Discovery of the "internal" memo of suspension by this teacher-student, 26 May 92, weeks later, mandated a quasi-judicial hearing under 4300 regs.The JSC Code of Conduct provides for such an adversarial hearing pro-cess, and is the document sought in the initial legal action.

9 April 92 JSCED allegations of "poor data gathering","anarchistic, loose cannon vigilantism (lone ranger-ism)" were not substantiated by Drs. Tilley, Story and Page relative to extant moral or ethics codes, local,state

or federal regulations or laws.The inquisitors claimed that there were other, essential facts "...not in your (teacher-student's) possession...", but would not elaborate or divulge what this "missing information" was. Teacher-student left this meeting without oral or written charge."We'll be in touch."

On 10 April 92, subsequent a phone conversation with Dr. Page, indicating that teacher-student would be "black-listed" with the Vermont Department of Education (VtDoE) for his offenses, the letter outlining the JSCED decision on the matter, absent direct reference to "blacklisting", arrived at teacher-student's house.(LaC: Original Summons 26 Mar 93) Alleging a suspension from the High School as the "causus belli".

Admitting to an ex-post facto charging process, the 9 Apr 92 JSCED letter alleged that the accused had 1) violated 20 USC 1232g,the Family Educational Rights and Privacy Act of 1974; 2) incurred two "charges" of "responsibly" in complying with non-specific internal SHS regulations, and 3) had responsibly

complied with Vermont law regarding required supervisory meetings at SHS.

Equating charge with guilt, JSCED Professors Tilley, Story and Page 1) removed teacher-student from SHS 2) cancelled his heretofore sacrosanct Repeat Course Option to future Internships,and 3) stated that JSC would not recommend teacher-student for a Vermont Teaching License regardless, this latter sanction apparently the "...letter with black marks..." of Page's A.M. phone call.

A unspecified due process appeal could be brought, said the JSCED "decision", to the Academic Dean, now Respondent-Defendant Dr. Vincent Crockenberg.

So there!!!!!

There was no appeal of the JSCED order at the JSCED level.

On May 5, 1992, Crockenberg professed that, absent an "academic level appeal procedure" extant in written form, that he, Respondent-Defendant VSCC General Counsel (and then current SHS school board member) Stanley Carpenter, Esq,and Dr. Daniel Towner of the Faculty Governance Graduate Committee would create an ad

ad hoc "appeals procedure" de novo, affording teacher-student timely redress.

On or about 21 May 92, Carpenter "resigns" the process, replaced by now Respondent-Defendant Paul Sutherland, Esq, who announces this change on 26 May 92, simultaneous to his request of the teacher-student for a document list which appellant will bring to the 28 May 92 hearing called, by Towner this same day, just prior to Sutherland's phone call.The document list will enable Sutherland to effect "instant" representation of JSC at the "hearing" two days hence.(LaC Exhibit: Appendix XII)On 26 May 1992, post substantial meetings in Barre with students and parents/guardians regarding the "...information not in your possession..." JSC allegation of 7 weeks earlier, and after two meetings with different Vt. State Social Rehabilitation Services upper level officials in their Morrisville, Vt. offices discussing the information now in his possession, teacher-student files, as a mandated reporter under the Vermont Statutes,a bona-fide charge of serial Intellectual Child Abuse against Richard Wilgoren (SHS),naming

JSCED Drs. Tilley, Story and Page as accessories.

Arriving at JSC on 27 May 92, with prior notice of 22 Mau 92, teacher-student is refused access to his personal education records by a letter dictated, unsigned, by now Respondent-Defendant Dr. Robert Hahn, president, JSC.(LaC Appendix XII)

Sans records, teacher-student prepares for 28 May 92 Graduate Committee "appeals hearing", and arrives for same at 1 PM that date.

Delayed to bring a heretofore banished tape recorder into the meeting, appellant teacher-student is allowed to read an opening statement.Dr. Towner then states that "constitutional issues" will not be addressed, nor is the "behavior of Barre school employees" to be considered, and finally that successful teacher-student rebuttals of the 9 Apr 92 JSCED "charges" "....might not be a useful as you (the appellant) might think...".

Constitutional Crisis #2:The "charges" are converted to some amorphous "unfit to teach" category, in the midst of an "appeal" hearing

Fitness to teach hearings, under academic rules, are most formal hearings requiring all to participate, not "...some sort of hearing...".

In the words of committee member Dr. Black, the appellant must have done something wrong by virtue of appearing as an appellant ("... this letter (9 Apr 92 JSCED) did not state in #1 (FERPA charge) what you did...in great detail... it does state what you did wrong."), the fouls apparent to Black by virtue of the sanctions and punishments pronounced by his peers upon the appellant.

Chairman Towner recesses to call long-absent JSC field supervisor Page to the hearing. Dr. Page refuses to walk across campus and attend at the behest of her nominal superior, hearing officer Towner.Perhaps Page wants to avoid discussion of the secret 27 Apr 92 "post-suspension" meeting Page and ad hoc Graduate committee member Whiting (Assistant Graduate Dean) attended at SHS that date, a meeting where the teacher-student is not graded for what he actually did in the classrooms because he has been "previously" expelled from the JSC program

based on the then extant " secret running suspension".(VtSC Exhibit #5)

Sensing an opening of the discussion under the Graduate Committee's "Robert's Rules of Order" format, teacher-student steers responses from Dr. Story into the child abuse area, one of the few legal areas Dr. Story admits knowledge of, and motions for Dr. Towner, having called an additional witness for the college, to bring in the adult and adolescent witnesses waiting outside the committee's door, witnesses with first hand accounts of Wilgoren's now unrefutable serial, felony behaviors.(LaC:Graduate Committee Process)

Dr. Towner, overwhelmed by this turn of events, states "...I don't think I want to hear this...", and summarily adjourns the Graduate Committee "appeal hearing", just after 3 PM.(LaC Exhibit: 10/19/93 Graduate Committee Process).Teacher-student's request, 30 May 92, to re-convene the Graduate Committee is rebuffed by notification of 2 June 92, purportedly 2 letters from Dr. Towner.The first, a 28 May 92 Towner "summary memo" regarding the "hearing", is perfunctorily

deficient prima facie, and is unsigned. The second "formal decision letter", signed FOR DR. TOWNER by Crockenberg's secretary, Jo Anne Lamore, is clearly, by computer code/ file/storage/billing ident, the genus of Sutherland, posing as Towner who is vacationing on Cape Cod this date.(LaC: Appendix XII)

In July 1992 teacher-student filed a five (5) page complaint plus fifty (50) pages of documentation with the Vermont Attorney General's Office, alleging that Defendant Carpenter had designed an "academic due process" through the Graduate Committee which failed the test of all academic processes found in the JSC library texts. This grievance was forwarded, without comment or review, directly to Carpenter's VSCC address.(LaC:Appendix XII)

On 7 Aug 92 teacher-student filed a 1 VSA 315-320 request with Defendant Hahn, asking for written procedures relative to the "academic appeal process" afforded and due the appellant.

On 3 Sept 92, Defendant Hahn replied, stating that the "academic prerogatives" of Professors Tilley, Story and Page governed the procedures, and that appeal should proceed to Defendant Crockenberg's level.(LaC:Academic Prerogative)

On 15 Oct 92 teacher-student filed a multi-count grievance with Defendant Hahn, alleging that all JSC employees previously involved in the dismissal/appeal process had substantially violated the JSC Code of Conduct on multiple occasions,said allegations violations in both the academic and disciplinary Code of Conduct, section V.

On 4 Dec 92, Defendant Sutherland dismisses the grievance, noting that the Code of Conduct is a "student only" code administered by, yet not binding on, JSC faculty.(LaC Exhibit: 10/19/93 Certification Fraud).

Teacher-student meets with Defendant Crockenberg twice in January and February, 1993, on appeal matters. These meetings are so non-substantive and evasive that appellant is forced to submit appeal points and arguments by mail after each meeting.(LaC Exhibit: 10/19/93 Academic Dean Meetings).

On 16 Mar 93 Defendant Sutherland writes the "Academic Dean Appeal Decision" as a "draft" letter addressed to Academic Dean Crockenberg. On 19 Mar 93 Defendant Sutherland threatens appellant student with a harassment law suit over student's multiple record requests under 1 VSA 315-320, the Vermont Public Access Document Law.

Teacher-student replies to threat, noting that the "just burden" of the College is to comply with 1 VSA 315-320, regardless of "...embarrassment or inconvenience".If Sutherland wishes to proceed to suit, teacher-student will supply a case of adult undergarments to court personnel surely incontinent with laughter.

On 23 Mar 93 JSC publishes "Academic Dean Decision" rejecting the appeals of the student. Not only is the content of the "decision" inconsistent as to chronology and statements of fact,but the computer code /file /storage /billing ident on this document is consistent with attorney Sutherland documents, including the "Graduate Committee" decision of 2 June 92 and the 19 Mar 93 "harassment suit" letter. The enumeration on this computer code indi-

cates that the 23 Mar 93 document was created PRIOR to the 19 Mar 93 Sutherland "harassment lawsuit letter".(10/19/93 LaC:Plaintiff's Motion to Secure Documents)

On 26 Mar 93 teacher-student, citing 7 Aug 92 request of President Hahn for documentation, files a civil action, in the Lamoille Superior Court (LaC),Hyde Park, Vt., against Defendants Hahn,Crockenberg,and Carpenter,under 1 VSA 315-320, alleging that Defendants withheld the JSC Code of Conduct appeals process,the only documented academic and disciplinary process which allows for expulsion under the teacher-student's circumstances (sufficient grade point average, allegations of regulatory, no clinical defect), created an ersatz process to "...heinously and callously..." disguise governmental frauds and deceptions, asking the Court to compel discovery of the JSC Code of Conduct and compel the Defendants pay costs and fees to teacher-student for the delay.Service is USPS, Return Receipt Requested,to Defendants,Legal Process Service (Sheriff) to Corporate Agent of Record, Atty Sutherland.On 29 Mar 93 Sutherland refuses

official service, stating that he is not the agent of record for VSCC. By phone, teacher-student is told by Sutherland to serve individual defendants, by Sheriff's Deputy, which is accomplished 1-2 April 1993. (LaC: Summons to Defendants, LaC : Response to Summary Judgement Motions)

On 1 June 93, Defendant-Attorney Carpenter swears, by affidavit to the Court (LaC), that he never received a request from Plaintiff regarding "process documentation", the massive referral from the Vt. Attorney General's office to Carpenter, transmitted to Carpenter in 1992, not withstanding.On 11 June 93, Defendant Hahn issues a "final" appeal decision, upholding the previous appeals and supporting the JSCED expulsion decision.In the final paragraph,the charge to which the teacher-student has been long held deficient, a charge previously unpublished,genus in camera et in abstentia to the accused but known to the College,a charge of academic sedition, is finally published.(LaC:Plaintiff's Brief 6 July 93)

The teacher-student's "...consistent refusal to accept the reasoned judgements of others in positions of authority..." is a pronouncement as preposterously pedantic it is pathetically pompous.Absent subscribed, sworn oaths of affirmation to the state and national Constitutions,per 16 VSA 12 :Oaths, documents outstanding under 1 VSA 315-320 document requests, requests to which none of the eleven (11) "educators" involved in student measurements have complied, Defendant Hahn included, but one a series of teacher-student legal document requests (1 VSA 315-320) termed by the Defendants in their Motion for Summary Judgement response to the pending civil suit as "bizarre" requests for records, the authority of the authorities is but their power as state actors to illegally proscribe, punish and steal.(LaC:1 Nov 93 Plaintiff's Supplimentary Brief, LaC: Academic Prerogative, LaC Defendants' Exhibit 1, LaC: Defendants' Motion for Summary Judgement.) Defendants motions for summary dismissal are rejected, and a hearing date of 19 Oct 93 is set for Lamoille Superior Court.

On 19 Oct 92,teacher-student argues as plaintiff that 1) no suspension has occurred and 2) that the matter is not academic, but of a disciplinary nature concealed by the "ersatz" process.

Defendants, represented by Sutherland, claim that the issue is a simple grading matter, over which the Court has no jurisdiction. Court allows for additional written argument submissions following this hearing.

Immediately subsequent 19 Oct 92 hearing,teacher-student files a motion to secure documents at Sutherland and Collins, alleging that Sutherland is the "regent" behind the "appeals decisions", a third party determinant of the student's rights, and himself and/or his law firm are thus shielded,concealed "4th" Defendants.

Neither the Defendants nor their attorneys, now the 4th Defendant(s) responded to this motion.Both Vermont Courts have failed to act on this motion, disregarding Court duty and ignoring the "liberal construction clause" of 1 VSA 315 by failing to note to plaintiff what

proper action is due in regard to securing key, incriminating evidences and documents.

The Lamoille Superior Court rules, 29 Nov 93, in favor of Defendants Summary Judgement, citing two areas.

1) Despite a suit filed regarding a single public document, the JSC Code of Conduct,the Court magnanimously and erroneously grants Defendants relief from ALL 1 VSA 315-320 liabilities potentially actionable, but not yet before the Court, in a generalized, sweeping statement not grounded in fact, which grants veracity, granting gross liberal construction,to Defendants' simple statement that ALL requests for documents have been fulfilled,absent evidence of compliance.

2) In disposing of the College's contractual certification obligations (NEASC Accreditation Contract) to have a "...clear,concise, published,and readily available ..." document pertaining to expulsion from academic programs, parallelling actions against the teacher-student,the Court builds a two-tiered argument:a broad based "Goss v Lopez" foundation beneath a "Horowitz" house.

Equating teacher-student's expulsion under extreme,unusual circumstances with the "Goss v Lopez" cafeteria suspension,the Court rules that the 9 Apr 92 JSCED "meeting",by evidence before the Court a meeting as eclectic and non-substantive as the "appeals process", provides the minimum protections afforded students upon suspension per "Goss v Lopez." Ignoring the Vermont Regulations mandating a maximum process for a 10+ day "suspension", the Court accepts the Defendants' claim that no appeals process existed prior to expulsion, and that the de novo, instant "appeals" creations of Carpenter, Sutherland and Crockenberg fulfills the "less stringent" procedural standard of "Horowitz" regarding academic dismissals.Almost in passing, the Lamoille Court, again in error,states that the teacher-student's JSC Presidential "final appeal" is still pend-ing, 170 days post finis, on file with Court 6 July 1993.Teacher-student appeals the Vermont Supreme Court, citing gross errors above.Specifically,the appeal focuses on talismanic reliance of the Lower Court to accept governmentally

controlled labels absent evidential support.
In refuting "Goss v Lopez" authority,the "...some sort of hearing..." standard, teacher-student notes that while the College and the High School both now claim to have suspended the student, neither have provided a scintilla of chargeable allegation which is not teflon coated, nor have either the College and the High School made any remedial effort which meets the more stringent requirements the U.S. Supreme Court regarding EXPULSIONS of a speedy, summary and unusual nature.
The "Horowitz" cite,argues the teacher-student, has failed because 1) the JSCED/SHS internship apprenticeship monitoring is grossly negligent to the point of fiduciary fraud;,2)the instant, de novo "appeals" creation DID NOT aid the student remedially, that appeal does not deconstruct to suffice for the total absence of academic remediation, and thus the "instant" "appeals process" is punitively an ex-post facto mechanism,3)that the prerogative of academic expertise is voided by the actual powers deciding the accused fate, the non-academic, le-

gally esoteric "Regent", now "4th Defendant" Attorney Sutherland, a "third party participant",and finally, just as predicted in his partial dissent in "Horowitz", 4) Thurgood Marshall's worst nightmare, the Constitution trampled by conflicted administrators, who, in full control of the labels,dictate procedure to the disservice of truth,scholarship and justice, has finally come true in Vermont. (Vermont Supreme Court, hereafter VtSC,Appellants' Brief, Momorandum of Law, Statement of Issues, Brief Case Description,Oral Argument) In oral argument before the Vermont Supreme Court,10 May 94, the teacher-student, disregarding factual presentation, facts which the Court supposedly was quite knowledgeable of, appealing to law references, as directed by the Clerk of the Court, presented a case of governmental bills of attainder supported by ex-post facto regulation within a label-clad ersatz academic due process. Disciplinary measures, not esoteric academic behaviors, claimed the teacher-student, explain the speedily rendered decisions and disjunctive

appellant aberrations which comprise the evidence in the case file.

Defendant Sutherland replied with a rambling mini-discourse of the history of the case, and then was asked by one of the Justices two (2) questions.

To the first, regarding a "...fleshing out..." of the "grading incident" at the High School, Sutherland notes a simple disagreement over grading practices.

To the second question:"Did the College investigate Mr. Lucas' allegations regarding Dr. Wilgoren?", Sutherland replied "...uhhh... not really, the College was more interested in the method Lucas used to file the allegations."The "Patterson-Amsden" memo of 1 May 92, de-tailing a High School Guidance Department investigation of both OFF CAMPUS and on cam-pus teacher-student and SHS student behaviors, an investigation conducted April 16-27, 1992, conjunctive with a meeting at the High School 27 April 92 called by Patterson and attended by BOTH SHS and JSC employees, sat in the evi-dence file (VtSC Exhibit 5), known to Sutherland and supposedly the Court, which

both seemed satisfied to separate SHS from JSC, thus avoiding a perjury trap in Sutherland's oral denial of JSC investigation of the "grading incident"re: the 1 May 92 Paterson Memo.

The Vermont Supreme Court ruling of 15July94 echoed this sentiment. Conspicuous in it's absence is any Supreme Court mention of the Lower Court's "Goss v Lopez" as foundation, a foundation without which the LaC "Horowitz" house falls. In its stead, the Vermont Court questioned the contractual rights of a fee-paying Graduate Student in a state-promoted, state-supported, state-sponsored, state regulated by law licensing program.

In following, the Higher Court equated the "less stringent" "Horowitz" standard with the Defendants' oleaginous, eclectic pro-forma process,disregarding large gaps in evidential fact and contiguous logic.

The Lower Court's broadbrush assertion of the Defendants' compliance with ALL 1 VSA 315-320 records requests, the outstanding 16 VSA 12 : Oaths omission not withstanding,was duly certified by the Vermont Supreme Court.

Finally,the Court stated that teacher-student allegations of governmental conspiracy were too thin to accept.

Teacher-student filed, as allowed, for re-arguement,refuting the disjointed contractual argument of the Court, and detailing the "4th" Defendants' control of the Graduate Committee and Academic Dean Appeals decisions, decisions minimally written on the computer network of the "Regent" attorney Sutherland, and bearing,by all accounts, material not attributable to their nominal authors,esoteric experts Drs. Towner and Crockenberg.

Teacher-student contiguously filed a discovery motion seeking the 16 Mar 92 "draft letter" acknowledged by Sutherland to be his creature, a "draft letter" which is unrefuted by and personally represented to teacher-student by Sutherland to be identical to the 23 Mar 93 "Academic Dean Appeal Decision." Also sought was the line item billing of Sutherland and Collins submitted and paid the firm by VSCC during the administrative construction and actual conduct of the JSC de novo,ad hoc "appeals

process" PRIOR to constructive legal action by the teacher-student.

The Vermont Supreme Court rejected these motions for re-argument, sending the matter to the U.S. Supreme Court on appeal.

Federal Questions: Time and Content Requirement:When Raised, Method,Disposition

Not all process on the campus is Academic Due Process. What emerges from the campus is the product of the process utilized.When frauds, deceptions and devious constructions emerge from the campus, this is evidence that the process, though "academic", is ersatz.

When genuine Academic Due Process is employed, what emerges from the campus is the truth. Genuine Academic Due Process sifts facts and evidences, relies on myriad testimonies and affidavits, and with discipline measures accurately and fairly.When theory is proposed, the theory,or thesis,is a testable quantity that the Academic Due Process subjects to substantial,intense testing.To treat theory otherwise would elevate the campus to cathedral.

The same sifting of facts, evidences, testimonies, fairly and judiciously measured and weighed, either supports or rejects, partially or wholly, the testable thesis.

What is before the Court is not an anarchistic student attack on the genuine prerogatives of disciplined scholars and their precise ministerial measures.
Rather, the matter before the Court is a defense of the Academic Due Process by a perhaps over zealous teacher-student decrying faux scholarship and fraudulent measures.
The record shows that the Federal Questions before the Court were timely, concretely posed, in a substantial manner, on the JSC Campus.
The record shows that the campus authorities abjectly avoided and universally avoided comment on any of the issues.

The first question of fair measure was an unresolved 1st Amendment question regarding philosophical screening disguised as "English Competency",thus both Free Speech and Grievance issue.There was no response to these issues.
The 1st Amendment question of Free Assembly, as well as the 20 USC 1232 h issue,arose when the High School, SHS, investigates off campus, off hours student activities AS IF these are

jurisdictionally extra-curricular school functions.The campus authorities concealed this investigation, and avoided discussion.

"Star-Chamber " processing, at JSCED and SHS Guidance, where students, presumptively under academic rules, must answer questions and surrender documents and notes, while the inquiring authorities behave as a super empowered Grand Jury, exempt from response, are the campus 4th and 5th Amendment incidents. Campus authorities call this academic prerogative.

The entire "ersatz" academic process, at JSC and adjunct placement site SHS, where genuine empirical measure was corrupted, arbitrarily and capriciously, and then published as the result of genuine scholarship,that is,report card grades, of this teacher-student and his history students,and the concomitant theft of student intellectual labors, are the 6th and 14th Amendment issues on campus.Campus authorities call this academic prerogative.

The predisposition to pre-measure outcomes, and to adjust standard measures to meet expected outcomes, on both campus', is the Constitu-

tional Issue at Article 1, Section 9:Bills of Attainder and Ex-post Facto Regulation.Again the academic prerogative of the scholars measuring,say the authorities.

This focus on outcome regardless of input, with the genuine fruits of intellectual labors denied and denigrated, a measure of punishment rather than reward, is also the genus of the 8th Amendment fouls on campus. Academic prerogative says the JSC President. 20 USC 1232 g FERPA "Buckley Amendment" issues,also 34 FRC 99 empowering FERPA regulations, were raised on campus in the JSCED "expulsion" order.The prerogative of scholars. Converting graduate interns from student-apprentices into long term, unpaid, involuntary Graduate Assistant "substitute" teachers, who labor for other, licensed teachers collecting regular as well as supervisory pay but completely neglectful of their regular and supervisory duties, is the prerogative of the licensed class, claim the campus authotities. This teacher-student contends that these actions are no more than a gross violation of the 13th Amendment of the Constitution, and

involve issues of 20 USC 1097 violations regarding Federal Student Loan Fraud.
The immoral academic "prerogatives" of the JSC and SHS educational experts with esoteric, specialized academic knowledge now certified as primal by the Vermont Courts under the "Horowitz" standards, are no more viable nor less excused than the flawed,legal expertise of the campus attorneys, Carpenter and Sutherland,in their total disregard for the Federal standards found in "Keyishian" and post-"Keyishian" Supreme Court rulings.

The "Keyishian" and following Court rulings were injected by the teacher-student immediately post Graduate Committee "hearing", through the teacher-student complaints to the Vermont Attorney General's Office, which forwarded these complaints to Attorney Carpenter, and presumeably Sutherland as well.Carpenter has,in a submitted affidavit,denied that this report,now Appendix XII in the record, was forwarded to him.(1 July 93; LaC)

Additionally, the issues brought to the supposed Constitutional Officers/Scholars, per their 16 VSA 12 Oaths, all issues involving genuine academic processes that the scholars, by dint of the knowledge and expertise,knew or should have known involved Federal Issues, are not exclusively the purview of legal experts Sutherland and Carpenter.That educational leadership "experts" Page and Tilley,the latter an instructor of seasoned licensed teachers seeking higher level licenses,and Dr. Story,as the chair of JSCED, were ignorant of the Federal Issues,and thus innocently avoided Federal Issues,can not be accepted by the Court.Dr. Tilley agreed to meet with teacher-student by 27 Apr 92,a meeting Tilley never called.Rather,on 27 Apr 92,Drs. Page and Whiting are terminating the "suspension" at SHS, ex-officio, in camera.Genuine Academic Due Process did not fail on the JSC campus in these instances. The abject avoidance of, flight from and feigned ignorance of the substance of the issues demonstra-tes that the discipline succeeded. Each time the JSC authorities paste "prerogative" over their fail-

ures to delicately and sensitively consider facts and evidences, the teacher-student wins the point,thus resuscitating Academic Process and Academic Freedom.

What passes to the Vermont Courts is but the chronicle of truth subverted by pretentious prerogative.The "ersatz" process was designed to stand before the Courts, and thus far has. The purpose of this clever design is to shield the JSC scholars from a genuine process which would force the scholars-in-charge to face and admit their academic, civil and criminal liabilities.

At this point, the VtDoE 4300 processes regarding "unusual" suspensions, very "long suspensions", and/or the JSC Code of Conduct Academic/Disciplinary process, both highly adversarial and comprehensive, are past due.

A "simple" Access to Public Documents action brings the "ersatz" process off campus and to the Courts. At the Superior Court (LaC) level,the initial summons, teacher-student's memorandum of law, deflection of early dismissal motions, oral argument, supplementary brief and motion to secure documents all point

to the Federal Issues first raised on the campus.

When the Defendants said the "magic phrase", "...this is a grading dispute, not a disciplinary matter...",LaC reverted to "Horowitz" poste-haste, fashioning backwards a Federal reasoning that would allow the College,bound by contracts to have WRITTEN procedures for summary expulsions, to escape from answering under 1 VSA 315-320 the questions the College had not answered on campus.

Additionally,LaC granted liberal construction, under 1 VSA 315,not to the citizen seeking the written processes,but rather to the government, excusing even records under request, and still outstanding, but not under suit.

Thus the Federal Questions passed to the Vermont Supreme Court (VtSC). Here, the pro-se teacher-student, armed with the legal decisions of LaC, could, after research, argue the law.

VtSC rejected the teacher-students voluminous case file, 180+ pages,upon appellee motion, but was still pressed to reverse "Horowitz" and "Goss-Lopez" authorities misapplied by LaC.

Appellant Motion, Issues to be Raised,Momorandum of Law, Supreme Court Exhibits, and Legal Brief all pointed to the flawed reasoning regarding "Horowitz" and " Goss v Lopez" Lower Court constructions.

The oral argument before the Court was specifically to the Constitutional Issues:Bills of Attainder,Ex-post facto Regulation,myriad violations of free,academic discourse Rights promoted by "ersatz academic due process" and strained, attorney manipulated abnormal campus processes.

VtSC affirmed LaC, questioning the contract right of the appellant, upholding "Horowitz" proforma, with a very weak affirmation of the "Goss-Lopez" foundation upon which LaC built its decision.

On petition for re-argument, teacher-student rebuilt the legal contract that binds the parties,from the Vermont Legislature to the Spaulding High classrooms,filing almost simulaneously to acquire the documents from the attorney's files which LaC had failed to secure per the teacher-student's LaC motion.

In denying reargument, VtSC is affirming the actions of JSC and JSCED. It seems to follow that while the Vermont Supreme Court has great powers,it does not have the power to overrule both Article 1,Section 1,of the Vermont Constitution, as well the 13th Amendment of the United States Constitution. The contract that is extant between the State,the College,the High School and the teacher-student is but a Common Law Involuntary Servitude by Performance Contract.

"Horowitz" can not support such a contract.

Signed this day, the 18~~th~~ November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

RESUBMITTED
12/7/94 JL

John Lucas

Amplification for Allowance of Writ of Certiorari

The ethical and moral prerogatives and duties of scholars to measure and grade fairly have been long recognized under the law.The prescription from English Law, that "...In such cases, Boards of Education will have to ascertain the law as well as ascertain the facts" (Anti-fascist v McGrath at 170) echoes the late 19th and early 20th century American legal traditions upholding fair and honest measure in education(6 ALR 1533 et al.)

Fair measure "...is ingrained in our national traditions, and is designed to maintain them." (Anti-fascist v McGrath, at 161.)

Modern Supreme Court and Lower Court rulings, not numerous, none the less uphold the fair measure doctrine within the academic world. The grading process that leads to success also determines failure. Each time a failure has come before the Courts,(Horowitz at 80-81, 92-93 [7,8], 95[3]. 106[21], Gaspar v Bruton at 845-849, Mahavongsanan v Hall at 450[2]), the Courts were afforded the opportunity to examine

students in scholastic decline or failure, and measure, by evidences and testimonies, the actual academic process of calculating the students' defects.(LaC: Plaintiff's Response: Motion for Summary Judgement,Affidavits of Defendants, LaC Exhibit Academic Prerogative; VtSC; Appelant's Memorandum of Law).The academic process is one of gathering the evidences and testimonies and then determining the grade.(LaC:Academic Prerogative; VtSC:Appellant's MemorandumOf Law) The Courts , in determining that the process actually did collect this evidence and testimony, have ruled that the academic process, and the resultant grade, are legal.(VtSC:Memorandum of Law) This case is the reverse "process", an "ersatz academic due process" which simply grades without evidences and testimonies.

Alleging, before the Superior Court (LaC) that the teacher-student had filed "bizarre" requests for records, the College and its attorneys failed to explain why, when the teacher-student initially complained about "19 phantom homework assignments", the educators didn't simply silence the "bizarre" complaint by pro-

ducing either the "19 assignments" and/or the grading sheets of Dr. Wilgoren that reflect -ed the calculations, based on these "assign-ments", "assignments" now so obviously fraud-ulent in their absence from the case and stu-dent files.Absent the grading sheets or the "assignments" themselves, any published meas-ure of perfor-mance is academically fraudu-lent,and thus le-gally suspect.(LaC: Academic Prerogative, VtSC Exhibit 13).Similarly,in the 1 VSA 315-320 Access to Public Documents Suit, the Defendants could have silenced the "bizarre" plain-tiff simply by providing the Court (LaC) with the requested document, the JSC Code of Conduct, in the documents which the Defendants filed in defense of their "aca-demic due process".Surely, if the Code of Con-duct was a "disciplinary code",that claim,a-long with notice in the Code of Conduct to re-fer to an "Academic Due Process Code" would have settled the issue.(VtSC:Appellant's Brief)Instead,Defendants DID NOT provide the Court with a copy of the Code of Conduct,sim= ply stating that they had belatedly sent a copy of the Code, post summons, to the Plain-

tiff-student.(LaC:Plaintiff's Responses to Defendants' Affidavits,Motion for Summary Judgement)Teacher-student supplied the Court with the Code, demonstrating that the Defendants' "academic due process" existed neither in the Code of Conduct nor in the JSC Policy Manuals regarding genuine academic, that is, grade point measured, deficiency or failures. (LaC:Academic Prerogative) Any notion that the teacher-student exhibited "idiosyncratic behaviors" refers to the teacher-student's Constitutional behavior, not some legitimate measure of professional conduct which would materially disrupt the educational process. Failure to remediate whatsoever undermines any claim that this "disruptive behavior" was a manifestation of rebellion outside of structured authority.(VtSC: Appellant's Brief) The Political Educational Establishment has but to put these evidences before the Courts, the "assignments",the grading sheets, the Code of Conduct, and the published grievance procedures (inside the Code of Conduct),having had

numerous entreaties and opportunities to produce said evidences, refuting "bizarre" teacher-student "harassment" of legitimate scholastic measurement and educational authority, and their case is irrevocably made.

Instead, the evidence clearly shows the their "process" is designed and implemented through completion to avoid evidences and testimonies.

In a post-haste refinement of the word "summary", the JSCED expels the student from its Vermont licensing program for his behaviors which resulted in his earlier suspension from the High School, based on an internal "memo of suspension", created, ad hoc, the day AFTER the student is expelled from the College.

Fact: Without notice, charge and opportunity to refute, the suspension is a long term suspension.

Fact:The VTDoE 4300 Regulations require that written notice plus a full adversarial hearing constitute a legal, long term suspension in Vermont.

Fact:A legal,long term suspension in Vermont would mandate a disciplinary hearing on the JSC campus to see if Expulsion is warranted.

Fact:A disciplinary process, under the Code of Conduct, is an adversarial hearing procedure.Fact:No one on the other side has been compel-led to testify, a failure by design of the "ersatz" process, at any time in this case. Fact:The design is successful in concealing the truth.While "...summary administrative procedures may be sanctioned by history or obvious necessity ...these are so rare as to be isolated instances". (Anti-fascist v McGrath at 168)Indeed, the VtDoE 4300 regulations regarding suspensions, built on "Goss v Lopez", allow for emergency suspensions without notice, but mandate that, within 10 (school) days, written notice go to the student AND a hearing occur.The evidences clearly show that not only was the "memo of suspension" internal between the College and High School only, but also that,10 instructional days after the teacher-student is placed on "leave of absence",(7 Apr 92), the College and High School authorities meet(27 Apr 92) secretly at the High School to decide to NOT grade the student for work completed because the student had been expelled 8

school days earlier.That the authorities at this meeting did not discuss,even peripherally, the ongoing High School investigation of the OFF CAMPUS, OFF HOURS meetings of the expelled teacher-student and his former American History High School students, evidence before the Courts, does not follow at all. The genii of this case are the "19 phantom assignments", the summary academic expulsion of a teacher-student whose grade point average mystically plummets from 3.78 (of 4.0) to irremediable failure in less than 30 minutes,without actually lowering the grade point average 1 iota, and the secrecy surrounding all of the evidences involved in the decision making. The Superior Court (LaC), in violation of the liberal construction clause of the Vermont Access to Public Documents Law,accepted proforma the College's statement that all requests by the plaintiff for records had been fulfilled.

Arbitrarily determining that the dismissal was for "academic deficiencies", due process, said the Court, "...negates any concept of flexible procedures." (Goss v Lopez at 577-78).The LaC Court ignored totally the benchmarks available from "Morrissey v Brewer" referenced in "Goss v Lopez", particularly the "Anti-fascist v McGrath" cites two pages later in "Goss v Lopez", stating that "...secrecy is not congenial to truth seeking, and self righteousness is slender assurance of rightness" (Anti-fascist v McGrath at 170, 171-172.)Similarly, the Superior Court failed to examine the font of the flexibility expounded in Goss v Lopez, benchmarks from Morrissey v Brewer as found in Matthews v Eldridge.Three factors, private interest taken by the government, risk of error, and particularly the government's interest in economy, constitute the borders of flexibility.In spite of the government's interest in a minimizing the "...fiscal, administrative burdens...that the additional or substitute procedural requirement would entail" (supra at 335), there is not a hint that the

government is authorized by law to expend additional sums of money on an ad hoc "academic due process" which is no more than an expensive, constantly metamorphose progression of failures to find facts and and self created procedures promoting avoidance of official duties. The Superior Court read "flexibility" where the reality,per the evidences,is motion masquerading as process.

Granting this "flexibility",the LaC Court lectures that this "flexibility" allows for "far less stringent" procedures where academic deficiencies are in question,thus accepting, at face value, the Defendants' meteoric and metamorphosed "appeals" venues, the Graduate Committee and Academic Dean "appeal" steps. Thus, educators who refuse to talk about the Constitution, the High School and Richard Wilgoren, will process the teacher-student under "Horowitz" authority.

The error:The Lower Court equates simple, physical and geographical jurisdiction with academic jurisdiction;since the problems erupted in a Graduate Program,only "expert evaluation" by academic luminaries will fulfill the legal requirements.

The Goss v Lopez "flexibility" doctrine actually mitigates against a separate process burdened by outside legal fees and special, ad hoc committees and procedures, even if an "academic determination" is under consideration.In this case,lack of written suspension notice,summary expulsion using non-sequiturs (there are three charges from JSCED alleging responsibility, not defect),a blank,ungraded clinical grading sheet and a grade point average near perfect 60 days POST expulsion are facts the Vermont Courts failed to balance against Defendant's assertions, and these facts, highly unusual on their face, should have pointed the Courts to the limits of "...some sort of hearing..." and "flexibility" in accepting minimal procedural protections.

"We should make it clear that we have addressed ourselves solely to a short suspension not exceeding 10 days.Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension,something more than rudimentary procedure will be required." (Goss v Lopez at 584).

Granting a "flexibility" in the face of the unusual, summary expulsion, an expulsion lacking even a letter of suspension,the Lower Court (LaC) lectures that the procedural requirements in determining academic deficiencies are "...far less stringent..." than in disciplinary actions, per "Horowitz".

Yet the record before the Court substantially details how the procedure employed by the Defendants could not "...can tuna...", never mind meet the traditional academic definition of a "...precision instrument..." which uses evidences to test theories and hypotheses.

Seeking to explain how the College could violate its Accreditation Contract, mandating "...clear,concise,published and readily available..." procedures regarding expulsions, the Superior Court fashioned its decisions backwards, noting "less stringent" allowing "flexibility", authorizing Defendant Hahn's assertion that no procedure existed, thus allowing the Court's unsubstantiated notion that the Defendants had fulfilled ALL requests for records,when Defendants could not demonstrate that they had provided the Court with a copy of the record under suit, the Code of Conduct. The Lower Court equated genuine scholastic procedure with the Defendants' eclectic,Chinese fire drill while the record shows that the Academic Due Process, and thus the Constitution, were fully ablaze.

Campus jurisdiction,not sensitive consideration of the evidences, is seen by the Lower Court as reason not to look closely at motion disguised as procedure.

The Vermont Supreme Court goes further afield, questioning if a contract even existed between the teacher-student, the College, the High School, and the State of Vermont.Yet before this Court were the State Regulations, based on Vermont legislation , which succinctly explains how non-licensed teachers-in-training may stand before public school students and teach without the license they are training to obtain.Still stranger, with the other cites also before this Court (Gaspar v Bruton at 844, Mahavongsanan at 448, Goss v Lopez at 565,566,and Horowitz at 85, which assumes a property and/or liberty interest),the Court dismisses the argument of the teacher-student that absent the signed contract mandated by Vermont Regulations,which is also the JSC Student Teaching Handbook, page 1 (a record the College can not find), the evidenced performance of the teacher-student at the High School including the grievance over the "19 assignments" is common law proof that the contract existed.Without contractual authority,the Defendants could neither place the teacher-student in the High School, nor decide his fate once he had performed du-

ties at the High School.What the Vermont Supreme Court seemed to say is that the teacher-student was no more than a volunteer,not a Graduate Student compelled by the Graduate Program Requirements, to teach as a supervised apprentice in order to fulfill graduation requirements.

What follows after this,at the Supreme Court level,is a nearly pro-forma repeat of the Superior Court rationales,and an eerie sense of "Horowitz" redux, despite the obvious differences between this petitioner and Horowitz, especially the internal grievance filings which precipitated this expulsion.

Was the High Court in Vermont aware that 13th Amendment consideration were about to come into play?They had all of the facts, which included:1) a grossly unsupervised apprenticeship,2) work completed by the teacher-student for which others were paid, 3) no civic duty requirement demonstrating public need,4)compulsion and coercion by deceit and fraud in presenting the classroom experience as a Graduate Internship,and 5)denial and concealment of complaint and redress avenues.(Bobilin v

v Board of Education, State of Hawaii, 430 F.Supp 1095, 1099-1103).

There is no intent in "Horowitz" to permit involuntary servitude by "...far less stringent..." procedures, nor is this allowable under "...some sort of hearing.." quoted in "Goss v Lopez".The laws clearly require the Courts to delicately examine the actual scholastic circumstances and resultant academic conditions, and to not, pro-forma, accept the barest of minimums unless the circumstances and facts demonstrate that the issues are concomitantly minuscule.

As a citizen of Vermont, I am embarrassed to admit that the factfinding process in the Green Mountain State could have lead to these legally approved unconstitutional conditions.However, as an American, I appeal to the Highest Federal Court seeking redress of these errors.

Signed this day, the 10th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

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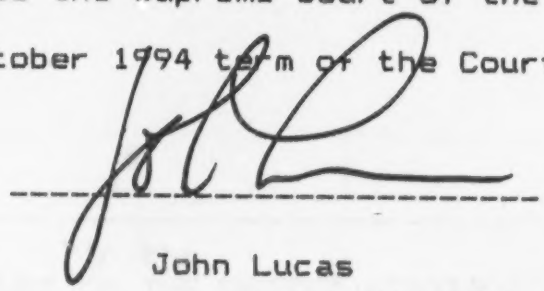

John Lucas

I Hereby certify that on this date, the 21st of November, 1994,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures, four (4) copies of this Writ of Certiorari, plus and additional copy, five (5) in all,to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service,Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing address of the Agent of Record of the Defendants,the law firm of Sutherland and Collins, P.C.

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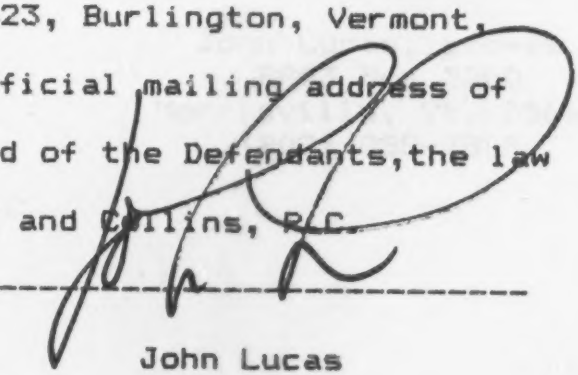

John Lucas

No.

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College, Johnson, Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

APPENDIX TO WRIT OF CERTIORARI

John Lucas, pro-se
RR#3 Box 3280
Morrisville, Vt. 05661
(802) 888-2815

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VT Supreme Court
FILED AT CLERKS OFFICE
AUG 23 1994

ENTRY ORDER

SUPREME COURT DOCKET NO. 94-015

MAY TERM, 1994

John Lucas	APPEALED FROM:
V.	Lamoille Superior Court
Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont	DOCKET NO. S0077-93LaC

In the above entitled cause the Clerk will enter:

Appellant's motion for reargument, filed July 29, 1994, fails to identify points of law or fact misapprehended or overlooked by this Court. The motion is therefore denied.

Appellant's motion for discovery is essentially an untimely motion to reargue. See V.R.A.P. 40 (motion to reargue must be "filed within fourteen days of entry of judgment"). The motion is therefore denied.

BY THE COURT:

"S/ FREDERICK W. ALLEN"
Frederic W. Allen, Chief Justice

"S/ ERNEST W. GIBSON III"
Ernest W. Gibson III Associate Justice

"S/ JOHN A. DOOLEY"
John A. Dooley, Associate Justice

"S/ JAMES L. MORSE"
James L. Morse, Associate Justice

"S/ DENISE R. JOHNSON"
Denise R. Johnson, Associate Justice

[ ] Publish

[ ] Do Not Publish

SUPREME COURT OF VERMONT

July 15, 1994

John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Mike J. Harris, Esq.

Re: No. 94-015, John Lucas v. Dr. Robert Hahn, et al.

The Supreme Court handed down its decision in the above-captioned case on July 15, 1994

Pursuant to V.R.A.P. 45(c), I enclose a copy of the Opinion and Entry Order.

Very truly yours,

"S/LARRY ABBOTT"
Larry Abbott
Deputy Clerk

LA/pb

Enclosures

2

ENTRY ORDER

SUPREME COURT DOCKET NO. 94-015

MAY TERM, 1994 VERMONT SUPREME COURT FILED IN CLERK'S OFFICE JUL 15, 1994

John Lucas V. Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont	APPEALED FROM: Lamoille Superior Court DOCKET NO. S0077-93LaC

In the above entitled cause the clerk will enter:

Affirmed.

FOR THE COURT:
"S/ Frederic W. Allen"
Frederic W. Allen, Chief Justice

Concurring:
"S/ Ernest W. Gibson"
Ernest W. Gibson III, Associate Justice
"S/ John Dooley"
John Dooley, Associate Justice
"S/ James L. Morse"
James L. Morse, Associate Justice
"S/ Denise R. Johnson"
Denise R. Johnson, Associate Justice

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE
JUL 15, 1994.

No. 94-015

John Lucas

V.

Dr. Robert Hahn, Dr. Vincent Crockenberg, Stanley Carpenter, All of Johnson State College, Johnson, Vermont

Supreme Court

On Appeal from
Lamoille Superior Court

May Term, 1994

Alan W. Cook, J.

John Lucas, pro se, Morrisville, plaintiff-appellant

Michael J. Harris and Paul K. Sutherland of Sutherland & Collins, Inc., Burlington, for defendants-appellees

PRESENT: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

ALLEN, C.J. Plaintiff John Lucas appeals the summary judgment granted to defendants on claims arising from a decision by Johnson State College (JSC) not to recommend him for licensure as a teacher. We affirm.

Until the Spring of 1992, plaintiff was a graduate student enrolled in the education program at JSC, pursuing certification as a high school teacher. As part of the program, he was teaching a history class at Spaulding High School in Barre. A dispute over grades arose between plaintiff and his supervising teacher, and plaintiff, believing that the supervisor had wrongfully lowered many of his students' tentative grades,

sent letters to that effect to the supervising teacher and the students involved. On April 9, 1992, plaintiff met with three professors from the JSC education department to discuss the incident. Following this meeting, the department representatives informed him by letter of their finding that he had not adhered to policies outlined in JSC's Student Teaching Handbook 1991-92, which pertained to confidentiality and compliance with host-school regulations. They decided that plaintiff would not return to Spaulding, would not have further student teaching placements, and would not be recommended for licensure by JSC. The letter also notified plaintiff of the availability of an appeal to the Dean of Academic Affairs. Plaintiff appealed the decision to the education department, the graduate committee,the academic dean, and JSC's president, all of whom affirmed the decision to remove plaintiff from his position at Spaulding and the licensure aspect of the master's program. However, plaintiff was allowed to remain in the program to earn a master's degree in education.

In the course of his JSC appeals, plaintiff filed numerous requests for documents with the school, and JSC responded either with the requested documents, a request for clarification, or notification that the requested documents did not exist or were otherwise unavailable. Plaintiff continued to file requests, many of which JSC considered reformulations of earlier requests.

In March 1993, plaintiff commenced an action alleging violation of SS 316 and 318 of Vermont's Access to Public Records Act, 1 V.S.A. SS 315-320, requesting attorney fees and litigation costs pursuant to S 319(d), and penalties pursuant to S 320. Plaintiff further alleged that JSC failed to

afford him due process in removing him from the teaching licensure program Defendants successfully moved for summary judgment on both claims, and plaintiff appeals.

To prevail on a motion for summary judgment, the moving party must demonstrate both the absence of genuine issues of material fact and entitlement to judgment as a matter of law. V.R.C.P. 56(c); Murray v.White, 155 Vt. 621, 628, 587 A.2d 975, 979 (1991). In determining whether an issue of material fact exists, the party Opposing the motion receives the benefit of any reasonable doubts and inferences, Pierce v. Riggs, 149 Vt. 136, 139, 540 A.2d 655, 657 (1987), but allegations alone do not create issues of material fact, Gore v. Green Mountain Lakes, Inc., 140 Vt. 262, 266, 438 A.2d 373, 375 (1981).

I.

Plaintiff first claims that he was denied due process in JSC's decision to remove him from the teacher licensure program. For the claim to be viable under the Fourteenth Amendment to the United States Constitution, plaintiff Must demonstrate that removal from the licensing and student-teaching aspects of the masters program deprived him of a constitutionally protected "liberty" or "property" interest. Board of Curators of the Univ. of Missouri v. Horowitz, 435 U.S. 78, 82 (1978). "Property interests are creatures of state law," id. at 82; plaintiff's bare allegations of a contractual relationship between JSC and him do not suffice to establish such a property interest. Furthermore, we need not resolve whether he suffered harm to a liberty interest Of constitutional dimension, because we conclude that plaintiff was afforded "at least as much due process as the Fourteenth Amendment requires." Id. at 85.

As a preliminary matter, plaintiff challenges the trial court's conclusion that the decision was based on academic performance. The record shows that plaintiff's handling of the grading disagreement prompted JSC's action, which was based on doubt about plaintiff's ability to adhere to ethical standards and to cooperate with superiors in the school setting. In the context of the licensure program these concerns are valid academic matters, because they rank as important measures of an individuals ability to perform as a teacher. See Lipsett v. University of Puerto Rico, 637 F. Supp. 789, 808 (D.P.R. 1986) (decision to cancel third-year surgery residency, based on conclusion that plaintiff would not make a good surgeon because of inability to follow program's line of authority and desire to do things her own way, was academic decision), rev'd on other grounds, 864 F.2d 881 (1st Cir. 1988); cf. Horowitz, 435 U.S. at 91 n.6 (in determining whether to dismiss a medical student on an academic basis, non-academic factors such as personal hygiene and timeliness may be as important in determining whether a student will make a good medical doctor). In the absence of evidence to the contrary, we agree with the trial court that plaintiff's removal from the licensure program was an academic decision.

The procedures afforded plaintiff before and after the original decision conformed to due process requirements. By its nature, due process comprehends a wide range of procedural protections tailored to myriad situations of state action affecting protected interests. Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). At a minimum, due process mandates that any procedural scheme provide an individual with notice and an opportunity to be heard. Goss v. Lopez, 419 U.S. 5651 579 (1975). An academic dismissal calls for less stringent procedures than would be

mandated for a disciplinary violation. Horowitz,, 435 U.S. at 86. Formal, judicial-type hearings are inappropriate, because "the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making." Horowitz, 435 U.S. at 90.

Plaintiff was given adequate pre-deprivation notice and an opportunity to be heard. He was clearly notified in advance of the reason for the hearing with the three education faculty members. Plaintiff does not dispute that he sent the letters to his supervising teacher and students; he used the informal meetings with JSC staff to explain his actions. Moreover, plaintiff does not contend that he was ignorant of the student-teacher program policies regarding confidentiality, respect for supervisors, and appropriate channels for airing disputes. Therefore, he received adequate notice of the nature of the proceedings and an opportunity to make his case to the individuals empowered to decide his case. JSC made available to plaintiff several levels of review before different members of the JSC faculty and administration, which included opportunities for plaintiff to present his case again. This array of procedures sufficed to minimize the risk of erroneous deprivation resulting from JSC's academic decision. Considering the academic nature of the decision, plaintiff was not denied
due process of law.

II.

Plaintiff's second claim alleges violations of the Access to Public Records Act. In May 1992, plaintiff made requests for documents at JSC concerning procedural and substantive due process accorded

graduate students, criteria for faculty imposition of sanctions on graduate students, and documents regarding the appeals process at JSC. Defendants responded with the Governance and Policy Manual Documents, the Graduate Catalogue (1988-1991), the JSC Catalogue (1991-1993), and the Student Teaching Handbook. Later that month, plaintiff requested copies of all correspondence between JSC and Spaulding High School concerning him, and all internal documentation relating to him and his career at JSC. JSC responded that plaintiff's file would be open to him for inspection, and explained that other documents requested either were being tracked down or did not exist. Between June 1992 and February 1993, plaintiff filed seven additional requests for documents, Most of which repeated earlier requests submitted and responded to by JSC. From March 1 to April 2, 1993, plaintiff filed eighteen separate requests for documents, many repeating prior requests. JSC's attorney had notified plaintiff in a letter dated March 19, 1993, that many of his requests had exceeded the scope of the Public Records Act and that any legitimate requests had been acknowledged either with the document or an explanation that it did not exist or was beyond JSC's control.

Pursuant to I V.S.A. S 316(a), "[a]ny person may inspect or copy any public record or document of a public agency." The custodian of the public record must "promptly produce the record for inspection," unless the record is exempt from production or does not exist. Id. S 318(a)(2), (4). The trial court concluded that JSC had complied with plaintiff's requests, and the evidence supports that conclusion. The record shows that JSC attempted to meet plaintiff's reasonable requests in good faith. Defendants provided plaintiff with full access to his academic files at the JSC Education

Department, and either supplied other documents requested or explained why they would not be produced. We have reviewed the document requests independently, and conclude that JSC discharged its obligations under the Public Records Act. Plaintiff suggests a conspiracy to keep relevant information from him, but offers nothing more than allegations to support his theory. This does not suffice to establish a genuine issue of material fact, and, on the facts adduced, defendants are entitled to judgment as a matter of law.

Affirmed.

FOR THE COURT:

"S/ FREDERICK W. ALLEN"

Chief Justice

Form No. 419
Document Enclosure Letter

STATE OF VERMONT

Date
Nov. 29, 1993

To: JOHN LUCAS
PAUL K. SUTHERLAND, ESQ.

Re:

State V. Defendant Docket No. S0077-93LaC

In re:

Plaintiff John Lucas vs. Defendant Dr. Robert Hahn, et al

_____ Enclosed is a conformed copy of the Judgment Order in the above-named case.

XXX Enclosed is a copy of the Findings and Order in the above-named case.

_____ Enclosed is a certified copy of the document in the above-named case which you requested. Certified copy fee is $ Your check should be made payable to:

_____ Enclosed is the following:

Very truly yours,

"S/ Lorraine M Swetzer

Court Clerk

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State of Vermont
Lamoille County, SS.

JOHN LUCAS

V.

DR. ROBERT HAHN, DR. VINCENT CROCKENBURG, STANLEY CARPENTER & JOHNSON STATE COLLEGE

LAMOILLE SUPERIOR COURT
Docket No. S0077-93LaC

FILED
NOV 29 1993
Lamoille Superior Court
HYDE PARK, VERMONT

DECISION AND ORDER

This matter is before the court on defendants, motion for summary judgment. Plaintiff, appearing pro se, has alleged violations of 1 V.S.A. 318, specifically that he was denied access to the Johnson State College Code of Conduct for the 1991-1992 school year. He also alleges that noncompliance with requests made pursuant to 1 V.S.A. 318 entitle him to relief under I V.S.A. 319, including reasonable attorney's fees and other litigation costs. In addition, plaintiff requests penalties be assessed against defendants pursuant to 1 V.S.A. 320. Based on the voluminous pleadings, we conclude plaintiff has raised two issues before this Court. The first is whether the college responded appropriately to plaintiff's varied requests in accordance with the law and second, whether he was terminated from Johnson State College with due process protections.

To begin, we note that plaintiff was a graduate student enrolled in the education program at Johnson State College. As a requirement to receiving his certification, he was placed as a student teacher at Spaulding High School. A dispute arose over grades between plaintiff and his supervising teacher at the high school which led to plaintiff's ultimate suspension from student teaching

by the Spaulding High School administration. Based on this incident and plaintiff's alleged academic deficiencies, plaintiff was terminated from the student teaching program at Johnson State College. It is this termination which is the focus of dispute between the parties.

Summary judgment is appropriate only where the moving party establishes there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. V.R.C.P. 56(c); Murray v. white, 155 Vt. 621, 628 (1991). Where pro se pleadings are involved, indicating that there may be genuine issues, a court should be hesitant to grant summary judgment. Bingham v. Tenney, 154 Vt. 96, 101 (1990). This is all the more the case when deficiencies in a pro se party's filings seem to go to form, rather than substance. Id.

Access to public records and documents is authorized under I V.S.A. 316("(a) Any person may inspect or copy any public record or document of a public agency . . .") Upon request, the custodian of the document must promptly produce the document for inspection or state the reasons for denial of access if the record is considered exempt. 1 V.S.A. 318. Plaintiff filed extensive requests for documents with defendants pursuant to the access to public records provisions regarding his procedural due process rights and information that he claimed was necessary to protect those rights. Upon reviewing plaintiff's requests for documents[1] and defendants, responses to such

[1] Plaintiff's requests for documents began in May 1992, demanding inspection of records at Johnson State College establishing the substantive and or procedural due process accorded to graduate students, documents pertaining to the criteria by which faculty members may impose sanctions upon graduate students, and documents regarding the appeals process at Johnson State College. In response, defendants submitted the Governance and Policy Annual Documents, Graduate Catalogue (1988-1991), Johnson State College Catalogue (1991-1993), and the Student Teaching Handbook. See Response Letter dated May 20, 1992 from Dr. V. Crockenburg, Dean of Academic Affairs. By April 1993,

requests[2] we conclude defendants complied with plaintiff's requests in accordance with the law. Plaintiff has received the Johnson State College Code of Conduct and has not indicated what documents, if any, that defendant withheld. Based on the foregoing, we conclude that defendants are entitled to judgment as a matter of law. We therefore decline to award any fees to plaintiff or to assess any penalties against defendants.

We now turn to plaintiff's second contention, the denial of due process. On April 9, 1992, plaintiff met with three professors of the Education department at Johnson State College. Based on that meeting and plaintiff's suspension from Spaulding High School, the Education Department concluded that plaintiff was to be suspended from student teaching without any further student teaching placements and he would not be recommended for licensure as a teacher by Johnson State College. We conclude that plaintiff's dismissal from Johnson State College was based on academic performance. See Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 55 L.Ed. 2d 124 (1978).

Due process, by its very nature, "negates any concept of inflexible procedures." Goss v. Lopez, 419 U.S. 565, 577, 42 L.Ed. 2d 725, 737 (1975). Where the dismissal is based on academic deficiencies rather than disciplinary violations, the amount of due process required is far less stringent. Horowitz, supra at 86, 55 L.Ed. 2d 133.

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extensive requests for documents had been made upon defendants ranging from requests for test scores administered as part of plaintiff's teaching placement, evaluations of his performance by plaintiff's academic supervisors, notes of conversations between professor involved in plaintiff's student placement at Spaulding High School, and travel logs for faculty members supervising field placements of graduate students.

[2]Defendants' responses to plaintiff's demand for inspection of records was also documented throughout the extensive pleadings. Defendants either produced the requested document, explained if such document was not in their control, or if such document did not exist.

> Academic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact finding proceedings to which we have attached a full hearing requirement. In Goss, the schools decision to suspend the students rested on factual conclusions that the individual students had participated in demonstrations that had disrupted classes, attacked a police officer, or caused physical damage to school property . . . The decision to dismiss respondent, by comparison, rested on the academic judgment of school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal.

Horowitz, Bupra at 89, 55 L.Ed. 2d 134. In essence, academic dismissal requires an expert evaluation of a student's progress, a decision courts are not readily adapted to make. Id. Based on the foregoing, it is clear that an adversary hearing is not required in situations of academic dismissal. As long as minimal protection are in place whereby the student is informed of any such inadequacies, then due process will be met. As indicated throughout plaintiff's requests for documents, Johnson State College did not have any formal records setting forth substantive or procedural criteria providing due process to graduate students. See Letter dated September 3, 1992 from President Robert Hahn to John Lucas. However, the Education department was vested with the authority to monitor graduate students involved in student teaching. Any decision rendered by the Education department could be reviewed by the Graduate Committee, with further opportunity to appeal any adverse decision to the Dean of Academic Affairs, and then the President. The procedures in place at Johnson State College provided plaintiff with an informal hearing with the Education Department in which plaintiff was afforded an opportunity to present his version of the incident that occurred at Spaulding High School. Plaintiff then appealed the decision of the Education Department to the Graduate Committee, and was permitted two

appeals to the Dean of Academic Affairs. He currently has an appeal pending with the president of the College. Since a formal adversary hearing is not required where dismissal is based on academic performance, we conclude that the meeting with the Education Department as well as the appeals process of which plaintiff has availed himself provided plaintiff with sufficient due process.

ORDER

Defendants, motion for summary judgment is hereby GRANTED.

Dated at Hyde Park, Vermont, this 29th day of November, 1993.

"S/ALAN W. COOK"
Alan W. Cook
Presiding Judge

cc: John Lucas, Pro Se
Michael J. Harris, Esq.

JOHNSON STATE COLLEGE
JOHNSON, VERMONT 05656

EDUCATION DEPARTMENT

October 22, 1991

Mr. John Lucas
RR3 Box 3280
Morrisville, VT. 05661

Dear John,

I am sorry to inform you that you did not pass the Education Writing Competency Examination at this time. Your writing was well done; however, the readers felt that you had not addressed the question as to your personal philosophy of education.

Please contact me as to a rewrite date within the next two weeks.

Sincerely,

"S/PATRICIA A. EYLER"

Patricia A. Eyler
Assistant Professor

JOHNSON STATE COLLEGE
JOHNSON, VT

April 9, 1992

EDUCATION DEPARTMENT

John Lucas
RR #3 Box 3280
Morrisville, VT 05661

Dear John:

On April 9, 1992, you met with Dr. Carol Story, Dr. Marilyn Page and Dr. Herb Tilley to discuss an incident that occurred when you were student teaching at Spaulding High School, This incident resulted in Spaulding High School suspending you from completing student teaching.

After hearing your perceptions and reading a document titled: History, 4th Period, Midterm Grades—AKA Soc 419-U. S. History "B", written by you, decisions were made based on the following rationale:

I . You did not follow the confidentiality policy stated in the Student Teaching Handbook, 1991-92, p. 43. In part, it states ... the classroom teacher must be consulted in all matters relating to the sharing of student information. Without any knowledge of or approval from the classroom teacher or principal, you sent letters to parents citing student information and naming classroom teachers.

2. Also, it is written in the Student Teaching Handbook. 1991-92. p 27. that you as a student teacher were also responsible for the following:

> "5. becoming familiar with the cooperating school program and policies as well as regulations such as those concerning school calendar, teachers' schedules, faculty meetings, and appropriate dress.
>
> "6. abiding by all cooperating school policies and regulations that apply to student teachers. "

3. You were also responsible for "arranging for at least weekly conferences with the cooperating teacher for planning and feedback purposes" as stated in the Student Teaching handbook, p. 28.

The decisions are:

I . You are required to cease your student teaching.

2. There will be no further student teaching placements.

3. You will not be recommended for licensure as a teacher from Johnson State College.

We recognize that due process is essential and these decisions may be appealed to the Dean of Academic Affairs.

Sincerely,

"S/CAROL M. STORY"
Dr. Carol Story, Department

"S/MARILYN PAGE"
Dr. Marilyn Page, Supervisor

"S/HERBERT TILLEY"
Dr. Herbert Tilley, Associate Professor

/mv
cc: Academic Dean Vince Crockenberg

SPAULDING HIGH SCHOOL BARRE VT

April 10, 1992

Dr. Herb Tillev
Department of education
Johnson State Collece
Johnson, Ver-@3ont

Dear Dr. Tilley:

This letter is provided for your records. It is essentially a restatement of our telephone conversation of April 7, 1992 and outlines the circumstances under which I made my decision to suspend. Mr.. John Lucas who served as a student teacher from January 27 to April 6, 1992.

On April 6, 1992 I became aware of a letter (copy enclosed) written by Mr. Lucas to one of his cooperating teachers, Dr. Richard Wilgoren. The letter addresses a controversy relating-to grading Procedures. I found the letter extremely demeaning to an established professional. Further and more importantly, I learned that Mr. Lucas had not only confrontationally addressed the issue with the cooperating teacher but had, without further recourse to in-house resolution written letters (one example enclosed) to the parents of the students whose grades were in question.

A further conversation with the host cooperating teacher, Mr. Dick Lussier indicated that Mr. Lucas had been strongly advised.not to present the letter to Dr. Wilgoren. Mr. Lussier advised Mr. Lucas to attempt to resolve the matter with the understanding that the cooperating teacher's decision would prevail.

During his stay at Spaulding High School Mr. Lucas displayed great enthusiasm and energy. I believe that he is sincerely interested in teaching. Unfortunately the lack of professional ethics displayed does not allow me, in good conscience, to permit Mr. Lucas to continue as a student teacher at Spaulding High School until a meeting with you and Mr. Lucas has been held. Please arrange this meeting.

Please feel free to call me at 476-4811.

Sincerely,

"S/ KAY PATERSON"

Kay Paterson
Principal

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JOHNSON STATE COLLEGE
JOHNSON VERMONT

June 2, 1992

OFFICE OF THE
ACADEMIC DEAN

Mr. John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

Enclosed please find a copy of the Graduate Committee's recommendation to the President in connection with your appeal heard on May 28, 1992.

In addition, I have today received your letter of May 30, 1992, which letter contains a request for another meeting with the Graduate Committee to further consider the action of the Education Department and to involve Dr. Page in the proceedings. I have shared your request with other members of the Graduate Committee, and it is our decision that the Committee recommendation to President Hahn would not be affected by further consideration or inquiry. Your request is therefore denied.

Sincerely,

"S/DANIEL TOWNER JL"
Professor Daniel Towner
Chair, Graduate Committee

498g.ltr
Enclosure
cc: Robert Hahn, President
Vincent Crockenberg, Academic Dean
Carol Story, Chair, Education Department
Alice Whiting, Member, Graduate Committee
James Black, Member, Graduate Committee

2 June 1992

TO: Robert Hahn, President
FROM: Daniel Towner, Chair, Graduate Committee
RE: may 28 meeting with John Lucas

I am directing this memo to you in accordance with Section 8.7 of the Johnson State College Faculty Governance Policy and in the absence of the Academic Dean.

On May 28, the Graduate Committee met with Mr. John Lucas and Dr. Carol Story in order to hear Mr. Lucas's appeal of the Education Department's letter of April 9, 1992, signed by Professors Story, Tilley, and Page, terminating his student teaching practicum and taking other specific action. Mr. Lucas asked the Graduate Committee to go on record as disagreeing with that letter. He did not ask us to change his grade, recommend a second practicum, recommend certification, or to take any other more specific action.

During the course of the meeting, it became clear to us that an incident did occur at Spaulding High School which caused the school administration to suspend Mr. Lucas's student teaching. As a result, the Education Department took action as described in its letter of April 9, 1992. At our meeting, Mr. Lucas admitted the occurrence of the incident, but justified his behavior on the grounds that he was mandated morally, by his oath as a U. S. Marine, and by the Fourteenth Amendment to the U. S. Constitution to act in the manner he did.

After repeatedly reminding Mr. Lucas that we were in no position to debate constitutional interpretation and that we had no say about the conduct of a teacher at Spaulding High School, we met and concluded that we had no reason to disagree with the Education Department's letter or with the actions taken by the Department.

cc: Mr. John Lucas
Dr. Vincent Crockenberg, Academic Dean
Dr. Carol Story, Chair, Education Department

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

6 July 1992

Mr, John Lucas
RR 3, Box 3280
Morrisville, VT 05661

DEPARTMENT OF
WRITING AND
LITERATURE

Dear Mr Lucas:

I will do my best to respond to the questions in your letter of June 18.

1. My feeling is that your characterization of the reasons for having a member or members of the Education Department present is in error. It was not the case that 'the Education Department was allowed [my emphasis) to have a single representative,' but that both you and I agreed that having a representative present was desirable. You and I discussed this in a telephone conversation in which I agreed to do what I could to have such a representative present. I said that I would try to accommodate your wish to have Professors Tilley, Story, and Page present. Professor Page's absence or presence would not have constituted 'a modification of a pre- existing agreement.' Dr. Page was asked to attend the meeting mainly as a courtesy to you. The purpose of having a member of the Education Department present was not to provide an opportunity for cross-examination, but to explain procedures. Dr. Page preferred not to attend, and I had no power to compel her attendance, As I recall, I explained in advance that you would not be permitted to bring your own 'witnesses' because, in my opinion, their 'testimony' would be irrelevant. I stand by that decision,

2. A. & C. I have not had an opportunity to listen to the transcript of the meeting, but I recall feeling unsure of what you wanted us to do. You said, I believe, that you simply wanted us to go on record as disagreeing with the Education Department's letter. I asked you at least three times, possibly four times, if there were anything else you wanted. I even listed options—change of grade, a new practicum, etc.—and you indicated that you did not have a list of demands.

3. The Graduate Committee afforded what it felt to be an adequate amount of time to discuss the issues. The Chair of the Committee was more than fair in stopping the clock when there were pauses, giving warnings when time was running short, and extending the length of the meeting beyond the original time limits.

D. The Graduate Committee did not 'affirm the decision of the JSC Education Department.' It simply denied your request to dis agree with that decision. The burden of proof was upon you to show why that decision was wrong.

D[sic]. The Committee did not move into executive session. The Chair asked non-members to leave, and everyone complied.

E. No notes, records, or tapes of the meeting were kept after non-members left.

F. & H. I do not feel at liberty to indicate how individual members voted in either of the decisions made.

G. No notes, records, or tapes were kept in subsequent conversations with Graduate Committee members.

Please let me know if there is other information I can provide.

Sincerely,

"S/ DANIEL TOWNER"

Daniel Towner, Chair
Graduate Committee

cc: Dr. Vincent Crockenberg, Academic Dean

LAW OFFICES
SUTHERLAND AND COLLINS P.C.

December 4, 1992

John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

Your letter of November 27, 1992 has been forwarded to me for response.

Your letter of October 15, 1992 cites the Johnson State College Student Code of Conduct in charging Johnson State College faculty members and administrators with violations of your rights. The Student Code of Conduct, however, is not intended to be used as a means for students to address grievances against members of the faculty or administration. As is apparent from the introductory language to Chapter V, the code is a standard for student conduct.

While the grievances you state in your October 15, 1992 letter may be different than those you are pursuing through your appeal of the April action of the Education Department, they do arise out of the same incident. In this instance, the redress offered through the academic appeals process is all that College policies have to offer. College policies do not accommodate students wishing to bring disciplinary action against faculty or administrators.

Accordingly, I wish to inform you that the College will not pursue your charges of October

Yours Very Truly,,

"S/PAUL SUTHERLAND"

Paul K. Sutherland, Esq.

cc: Robert Hahn, President
vsc\200

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LAW OFFICES
SUTHERLAND AND COLLINS

: March 19, 1993

Mr. John Lucas
RR3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

President Hahn has forwarded to me your letters to him of March 15, 1993; March 12, 1993; March 11, 1993; March 10, 1993; March 5, 1993; March 1, 1993 and January 30, 1993. Each of these letters contains a formal demand for information, some of which exists and some of which does not exist. In each letter you cite Vermont's public records law as the authority behind your demand. Frequently, however, your demands exceed the scope of the statute. Your letters take on the form of formal interrogatories and requests to produce documentation in connection with pending litigation. In addition to the relatively recent letters I have referenced, my file contains approximately 16 letters from you, written over a period of 8 months, containing demands for information and/or documentation from either President Hahn, Dean Crockenberg or me. Most of your demands have been carefully answered.

You have also had the benefit of an appeals process at the College. In that regard you have met with the Education Department, the Graduate Committee and Dean Crockenberg (twice). As I write this letter, the appeals process is on-going.

The purpose of this letter is to inform you that the current requests for information and documentation will not be answered. Future requests may also not be answered, depending upon their reasonableness. As always, your files, as they exist at the College, are available to you for inspection upon reasonable request. Also, your reasonable requests for copies of materials contained in your files will continue to be honored. I do believe, however, that there is nothing in any of your files at Johnson State College which has not been made available to you pursuant to an earlier request.

I consider your continuing demands for more information to be harassment. The further expenditure of College resources in efforts to be cooperative with you in this regard seems unwarranted.

Very Truly Yours,

"S/ Paul K. Sutherland"

Paul K. Sutherland, Esq.

867g.ltr
cc: Stanley H. Carpenter, Esq.
Robert Hahn, President

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

March 23, 1993

OFFICE OF THE ACADEMIC DEAN

Mr. John Lucas
RR #3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

On April 9, 1992, the Johnson State College Education Department removed you from student teaching and stated that it would not recommend you for teacher licensure. It took this action in response to an incident at Spaulding High School in which you engaged in conduct that, in the judgment of the Education Department faculty, violated the terms of the Student Teaching Handbook. The Department acted following a meeting on April 9, 1992, at which you were present and able to present your view of the Spaulding High School incident.

By Letter of May 21, 1992, to Stanley Carpenter, you appealed the decision of the Education Department to the College Graduate Committee. Following a hearing on May 23, 1992, which you attended and at which you were again able to present your view of the Spaulding High School incident, the Graduate Committee upheld the decision of the Education Department. You were so notified by copy of a memorandum from Daniel Towner, Chairperson of the Graduate Committee, to President Robert Hahn dated May 28, 1992.

By letter of October 21, 1992, you appealed the decision of the Graduate Committee to me. We have now met twice to discuss your appeal: first on January 19, 1993, and then again on February 8, 1993. In connection with those meetings, I have carefully considered your arguments. I have reviewed the written material you submitted to me as well as my own notes from both meetings and the tape recorded transcript of the May 26, 1992 hearing with the Graduate Committee.

I have decided to uphold the decisions of the Department to remove you from student teaching and to deny recommendation for licensure. The decisions of the Education Department faculty, I believe, were reasonable under the circumstances, a proper exercise of their professional judgment, and consistent with their responsibilities to the State of Vermont and to the teaching profession. The Graduate Committee also, I believe, has acted in good faith and in a reasonable manner following its hearing of May 28, 1992.

You are not currently enrolled in any courses at Johnson State College. You stated in the second of our two meetings, however, that you would like to continue to pursue your Master's degree in Education. I have discussed your request with Professor Alice Whiting, Chair of the Education Department, and Dr. Andrea Perham, Associate Academic Dean for Graduate Programs. We are all agreed that you may continue your Master's degree work, but that you will not be permitted to receive a Master's degree with certification, We will instead permit you to complete a Plan of Study for a Master's degree without certification, contingent only upon your willingness to work out an appropriate Plan of Study with Professor Whiting and approved by the Graduate Dean. If you do decide to return to the College, it will also be required that you conduct yourself in accordance with all applicable rules and regulations of the College, just as any other student must do.

I acknowledge that the current College catalogue gives you, as it does all JSC students, the right to repeat any course previously taken in order to earn a higher grade ('91-'93 catalogue, Page 50). The Student Teaching Handbook, however, does have a limiting effect on the repeat option since it requires that every applicant for EDU 470 must receive approval of the faculty in their department to be eligible for placement ('92-'93 Student Teaching Handbook, Page 4). The April 9, 1992 decision of the Education Department is controlling in this matter, and as part my decision in this case I uphold the Department's decision to deny you the right to re-enroll in Practicum 11.

If you choose to appeal my decision in this matter, you may do so in writing to Robert Hahn, the President of Johnson State College. Your appeal must be received by him within thirty (30) days of my decision, that is by April 23, 1993. The President may consider such an appeal in whatever manner he deems appropriate. He may or may not conduct another hearing.

On other matters, you requested in a letter to me dated February 8, 1993, that I help you obtain (1) certain notes of cooperating teacher observations of your student teaching at Spaulding High School, (2) certain notes pertaining to post-suspension interviews of students in your classes at Spaulding High School, and (3) a post-suspension report that you believe we received from Spaulding High School authorities.

On the first matter, the cooperating teacher observations, no Johnson State faculty member either solicited or received any such written observations from any of the teachers you worked with at Spaulding High School. If notes of such observations exist, they remain entirely in the hands of staff at Spaulding. You will have to pursue your inquiries directly with them.

On the second matter, notes pertaining to post-suspension interviews of students in your classes at Spaulding, we have no knowledge of such interviews and we possess no such notes. Again, if these notes exist, they remain at Spaulding High School. You will have to pursue your inquiries directly with them.

On the third matter, the post-suspension report you believe we allegedly received from Spaulding High School authorities, the only report we received is a letter from Kay Paterson, the principal, a copy of which I believe you already have in your possession; in the event you do not have such a copy, I have included a copy for your records.

Sincerely,

"M/ VINCENT CROCKENBERG

Vincent Crockenberg
Academic Dean

/jl

691g.ltr
cc: Robert Hahn, President

Enclosure

JOHNSON STATE COLLEGE
JOHNSON, VERMONT

June 11, 1993

OFFICE OF THE PRESIDENT

Mr. John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas:

I'm writing to inform you that I have completed my review of your appeal, and on behalf of the College, I am upholding the decision of the Johnson State College Education Department, taken on April 9,1992, removing you from student teaching and stating that it would not recommend you for teacher licensure. In sum, based on my review, it is clear that the College's position in this matter must remain that which was stated in detail in the letter you received from Vincent Crockenberg, Academic Dean, of March 23,1993.

In reviewing your appeal, I have also reviewed the entire process made available to you, and I can affirm that the process has been appropriate and complete. Because this is not an instance where the Student Code of Conduct applies, but is an academic matter, the steps made available to you were the appropriate ones, and the process followed throughout has been correct. In reviewing an appeal of a decision made through this process, the burden of the President is to ascertain that the decision made has not been arbritrary or discriminatory, and does not represent an abuse of power. I have so ascertained.

In conducting this review, I reviewed the letter you sent to Richard Wilgoren of April 6,1992; the eight-page hand-written document you presented to three members of the Education Department on April 9,1992, and asked them to sign; and the letter to you of April 9,1992, from Professors Story, Page, and Tilley, summarizing the incident at Spaulding High School, and informing you of their decisions.

I also met with the same members of the Education Department, and reviewed their meeting with you, and the statements made in that meeting. I also met with members of the Graduate Council, and discussed with them the statements made in their meeting with you of May 28,1992. 1 also met with the Academic Dean, and reviewed with him the contents of your two meetings with him.

I also conducted a detailed review of the entire correspondence between you and various members of the College, beginning in April 1992, and continuing through May 1993. This includes correspondence directed to a wide range of faculty members, and it also includes a variety of materials sent to this office by fax, which appeared to originate from you, since the material was incorporated in your final appeal to me, as well as other materials sent to the College, such as inscribed copies of All the President's Men.

This entire review illuminates numerous circumstances which inform my decision to deny your appeal. Certainly, the original incidents at Spaulding High School were egregious and unacceptable. In addition, in pursuit of your appeal you have not indicated an understanding of the inappropriateness of your actions in these incidents, and you have not acknowledged that you were in the wrong. You have persisted in asserting your unwillingness to accept the reasoned judgment of others in positions of authority. Considering all of these circumstances, I cannot reverse the Education Department's decision.

Any further questions about this decision may be directed to Paul Sutherland, representing the Vermont State Colleges.

Sincerely yours,

"S/ ROBERT HAHN"

Robert Hahn
President

cc: Vincent Crockenberg, Academic Dean
Alice Whiting, Chair, Education Department
Paul Sutherland, Esq.
Stanley Carpenter, Esq.

RH/bls

Bill of Attainder, Ex-post Facto Legislation Clause, Art 1:Sect 9;
Freedom of Speech, Peaceful Assembly,Redress of Grievances Clauses, 1st Amendment;
Unreasonable Search and Seizure Clause, 4th Amendment; Life, Liberty and Property Due Process Clause, 5th Amendment;6th Amendment (Complete);Cruel and Unsual Punishment Clause, 8th Amendment;13th Amendment (Complete);Due Process Clause, 14th Amendment; All of the United States Constitution, as amended
[pgs 43-37]

20 USC 1232 g, The Family Educational Rights and Privacy Act of 1974,(FERPA),The Buckley Amendment [36]

34 Code of Federal Regulation 99 et al;
FERPA Regulations [36]
ss99.2: The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act...

ss99.3(b)(2)(b):this term (records) does not include (1)Records of instructional, supervisory,and administrative and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

ss99.31;Under what conditions is prior consent not required to disclose (recorded) information:(8)The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code;

(12)The disclosure is to the parent of a student who is not an eligible student, or to the student

120 Congressional Record 39, 892 (1974)

20 USC 1232 h, Protection of Pupil Rights

(b) Psychiatric or psychological examinations, testing, or treatment:

No student shall be required, as part of any applicable program, to submit to....psychological examination, testing or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations

(4) illegal, anti-social, self-incriminating and demeaning behavior [40]

Chapter 1, Article 1: [All men born free, their natural rights, slavery prohibited], Vermont Constitution 1777, 1786

That all men are born equally free and independent...;therefore no person born in this country...ought to be holden by law, to serve any person as a servant, slave or apprentice...unless he is bound by his own consent...or bound by law for the payment of debts, damages,fines, costs or the like.

1 VSA 315-320 The Vermont Access to Public Documents Laws [37]

ss315. Statement of Policy: It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter 1, Article 6 of the

Vermont Constitution.Officers of the government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examinations may cause inconvenience or embarrassment...Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as herein provided.To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy

ss316. Access to Public Records and Documents (a) Any person may inspect or copy any public record or document of a public agency...

ss317 Definitions; public agency; public records and documents (a) ..."public agency" or "agency" means ....any political subdivis-ion of the state (b) ..."public record" or "public document" means all papers...or other written or

recorded matters produced or acquired in the course of agency business...

ss 318 Procedure (a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that: ...(4)if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian...

ss 319 Enforcement (a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides...

16 VSA 12 Oaths (1968) [38]

A superintendent,principal or teacher in a public school of the state, or a professor, instructor or teacher who will be employed hereafter by a university or college in the state, which is supported in whole or in part by public funds...before entering upon the discharge of his or her duties, shall

subscribe to an oath of affirmation to support the constitution of the United States of America, the constitution of the state of Vermont, and the laws of the United States of America and the state of Vermont;provided however, that such oath shall not be required by any person so employed who is a citizen of a foreign country.

16 VSA 164 (5), 1692, 1695, 1697, 1792 (a), 1751, and Chapter 59, Vermont Statutes authorizing the Training and Licensing of Teachers (Educators)

Vermont Department of Education Regulations 5100 through 5900 (July 1991)[38]
5100: Statutory Authority (as above)
5200: Definitions:
Approved Program means a teacher education program approved by the State of Vermont

Internship means a graduate experience where one acts as the supervised assistant to a professional whose craft they assume to acquire Supervision means on-site managing and having the legal responsibility for overseeing the work of the paraprofessional, intern, student teacher or volunteer

5234:(Requirements for License):Evidence of one semester of student teaching or an equivalent learning experience

5235.9:Ability to apply current state and federal laws and regulations as they apply to all children...

5235.10:Ability to identify conditions and actions which would tend to discriminate against students on the basis of sex,race, color,creed, age,handicap or national origin and to develop teaching strategies which will overcome those conditions or actions

5500:Teacher Substitutes:...an unlicensed person employed pursuant local school board policy may substitute for up to fifteen (15) days per teacher absence...

5900:Approval of Teacher Education and Continuing Education Programs:

5930 Approval Criteria:Evidence of institutional commitment to high quality teacher preparation including establishment of performance criteria for entrance to and exit from teaching preparation...;Evidence that students know what is expected of them in student teaching and that the faculty and students know what competencies are required for licensure...The placement of student teachers is the responsibility of the institution and must meet the following requirements...on (1) semester (minimum of twelve [12] weeks) of consecutively scheduled student teaching. Students should gradually assume the full role and responsibilities of the classroom teacher...the institution must have a written agreement with the school in which

the student teacher is placed, outlining the responsibilities of each party...;the placement process must be detailed in a student teaching handbook...;The supervision of student teachers by college/ university faculty will meet the following requirements:supervision will be provided by qualified faculty from the regular college staff (this includes graduate supervised field experiences, internships...); college/university supervisors in Vermont intensively observe and advise the student at least once every ten (10) teaching days...A specific student teaching evaluation process is detailed in the student teaching handbook, including the collection of data on student performance...To receive recommendation for licensure, a student teacher must meet the stated competencies...and receive a positive recommendation from the institution with written input from the cooperating field teacher...

Competencies:5440-28 Social Studies:3.Knowledge of teaching strategies particularly important to social studies such as democratic participation and debate;5(c):how to understand and cope with controversial issues, problems and human values...

Vermont Department of Education Regulations 4300 (Disciplinary Actions) Auth 16 VSA 1162 ;4311;

1:[pgs 37-38] In all cases of short suspension from school, which is generally regarded as 10 days or less, the student...shall be given an opportunity for an informal hearing...Except for cases ...(4311.3), the hearing must precede the suspension and the district shall provide:notice of charges,explanation of the evidence against the student; opportunity for the student to tell his... side of the story;decision in writing to the parent guardian.4311.2 In cases of long term suspension which is generally more than 10 days unless the school

district establishes a shorter period, the student...shall be given an opportunity for a formal hearing before the school board and the district shall provide:written notice of the following:nature of the charge against the student, date,time and place of the hearing, right to legal representation, possible penalties involved;opportunity to present evidence,opportunity to cross-examine witnesses, decision in writing...

Vermont Attorney General Report April 30, 1993, Re: Spaulding High School Child Abuse Reporting Internal Processes :"The potential reporting violation was the result of failures of the school faculty and administration to report to the Vermont Department of Social and Rehabilitative services an allegation of a student that a staff member...had inappropriately touched her...Vermont's child abuse reporting law requires that certain individuals, including ...school teachers...report or cause to be reported...information which

gives them reasonable cause to believe that a child has been abused or neglected...The investigation revealed that the effected student reported inappropriate sexual behavior on the part of the school custodian to four separate employees who were mandated reporters under 33 VSA 4913(a).None of these individuals reported the situation to SRS because they failed to recognize this type of conduct as abuse contemplated by the reporting law...The failure of the mandated reporters...was due in part to the lack of clear, written policy... and reporting protocols...The purpose of the law is defeated if concerns such as the unwillingness of the affected child or the fact that a report might break a confidence is allowed to interfere with whether a report is made...The report also revealed that some school personnel felt it was their responsibility to determine which reports by students were true and which were not...If concerns of potential or

future liability prompt a decision to withhold ...that concern should be balanced against the risk to other children such a policy poses, as well as liability if such a risk becomes a reality...The Office of the Attorney General cannot, and does not, condone the manner in which Spaulding High personnel and administrators handled the student report of this matter...

Vermont Child Abuse Law 33 VSA 4912 [Pg 38]

[2]An abused or neglected child means a child whose...psychological growth and development is harmed or is at substantial risk of harm by the acts or omissions of...other person responsible for the child's welfare...(3) "harm" can occur by (A) physical injury or emotional maltreatment...(4) "Risk of harm" means a danger that the child will be harmed by other than accidental means which would be likely to cause...protracted impairment of psychological growth and development...(7) "Emotional maltreatment" means a pattern of malicious behavior which results in impair-

ed psychological growth and development... New England Association of Schools and Colleges "Standards for Accreditation", Commission on Institutions of Higher Education 1992; 4.8:...the institution maintains sole and direct responsibility for the academic quality of all aspects of all programs...4.21 the faculty responsible for graduate programs are sufficient by credentials...4.32 Faculty...responsible for academic advising are adequately informed...4.41 The institution specifies and publishes requirements for continuation in, termination from, or readmission...

6.9 ...Policies on student rights and responsibilities,including grievance procedures,are clearly stated, well publicized and readily available, and fairly and consistently administered.11.4 The institution...has the necessary operating authority for each jurisdiction in which it conducts activities; and it operates within this authority.11.7 The

institution has established and publicizes clear policies...among them are policies and procedures for the fair resolution of grievances brought by faculty,staff or students

Johnson State College Department of Education Student Teacher Handbook 1991-92[pg 36,38,46] Inside Page: Field Placement Cooperating Teacher Agreement (JSCED); I have received a copy of the ...."Student Teaching Handbook"...I accept the responsibilities that are identified for the Cooperating Teacher....in return for my involvement I will receive a tuition waiver for one three-credit course.Cooperating Teacher (Signature Space) Date: (Space) School: (Space) Pg 29 Role of the Cooperating Teacher...4:performs supervisory functions Pg 30 Role of the College Supervisor...2; Visits the student teacher and the cooperating teacher a minimum of eight times during the semester...6;Provides the

student (teacher) with a mid-semester performance evaluation...10;Assigns the final grade after consultation with the cooperating teacher.

Pg 43 Confidentiality:...The requirements of the Buckley Amendment (on the privacy rights of parents and students)make it clear that any information that relates to students with whom student teachers are working is confidential.Student teachers must under no circumstances discuss the educational programs or records of their students with individuals other than those directly or indirectly involved in the educational programming of those students(the classroom teacher must be consulted in all matters relating to the sharing of student information). Student teachers must, under no circumstances discuss the children/adolescents with whom they are working in such establishments as restaurants, bars, grocery stores, or on the street corners etc...."...We believe that the information contained in the students'

education records belongs primarily to the students and/or their parents...(Vermont Policy and Procedures for Educational Records, 1984)...BUCKLEY AMENDMENT PRIVACY RIGHTS OF PARENTS AND STUDENTS (34 CODE OF FEDERAL REGULATION PART 99)

Pg 47 Code of Ethics of the Education Profession...Principle I:...3: Shall not deliberately suppress or distort subject matter relevant to student progress,,, 8.Shall not disclose information about students...unless disclosure serves a compelling professional purpose or is required by law...Principle II...6.Shall not disclose information about colleagues...unless disclosure serves a compelling purpose or is required by law..7.Shall not knowingly make a false or malicious statement about a colleague.

Johnson State College Academic Policies (ACA designation):

ACA 28.2; Appeal of Academic Policies

ACA 32; Academic Dishonesty

ACA 13; Grading System

ACA 6; Graduate Registration

ACA 16; Repeat Course Option

Students may repeat any course which they have previously taken to attempt to earn a higher grade.

ACA 3.1; Course Numbering

STL 2.1; Student Code of Conduct

The Code of Conduct sets forth regulations and policies affecting student life on campus. It details the behavior expected of students ...(JSC College Catalogues)

pg 42"The Code of Conduct applies to all persons enrolled at Johnson State College...

pg 43 K.All forms of ACADEMIC DISHONESTY, including but not limited to -cheating-fabricating-facilitating academic dishonesty and plagiarism [pg 38]

pg 44 P. Violating college regulations and policies...including, but not limited to...

R. Violating federal, state or local law...

DISCIPLINARY PROCEDURES:...F. At any disciplinary hearing, a student will have the opportunity to examine all evience ...present...witnesses or documents...the persons

making the (allegation) statements are made available for questioning by the student ....pg 46 Violations and Sanctions B.(5) Suspension form the college...not to exceed two years(6)Expulsion E. Accessories to acts prohibited by the Code of Conduct may be considered equally cupable with the principal offender.(pg 47)

ACA 53.1; Early Warning (Poor Academic Performance)The early warning process is formally to inform students who are performing poorly academically...during the 5th week of each semester an early warning should be sent to each student...

Academic Dismissal (From the 1988-91 Graduate Catalogue, p22):A graduate student must continue to demonstrate academic proficiency in coursework and must show reasonable progress toward the 3.0 cumulative grade point average required for graduation. Failure to have this minimum...will result in academic dismissal.Students may appeal their dismissal to the graduate council.

"Academic Freedom and Tenure; A Handbook of the American Association of University Professors", ed; Louis Joughin, The University of Wisconsin Press, Madison, Milwaukee and London 1967

"Academic Due Process is a precision instrument; It has a specific applicability or jurisdiction,It operates by established rules; It concerns itself with testable facts, then tests them, It is a demonstration of the human intellect at work, submitting tentative conclusions to comparisons with controls (through the consideration of evidences) and, while moving forward with a particular proceeding, it tests its own working hypothesis by constant reference to the burden of proof" pg 271 [VtSC pg 39]

"Academic Freedom in Our Time", Robert M. MacIver, Guardian Press, NY 1967 [39]

"What are the limitations on the freedom of the faculty?They are the limitations on

independent thought.They can be nothing more than the laws of logic and the laws of the country."pg 223

"Joint Statement on Rights and Freedoms of Students", American Association of University Professors, 1967,1990,1991,1992 [39]

...II In the Classroom B. Protection against Improper Academic Evaluation:Students should have protection through orderly procedures against prejudiced academic evaluation.[4] The student grievance procedures typically used in these matters are not appropriate for addressing charges of academic dishonesty or other disciplinary matters arising in the classroom...students should be afforded the safeguards ...in Section VI below.... Section VI:D:Hearing Committee Procedures...4.The burden of proof should rest upon the officials bringing the charges.5.The student should be given the opportunity to ...present evidence and witnesses, and to hear and question adverse witnesses.

"Statement on Professional Ethics", American Association of University Professors, 1987

V:...professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

"Ethical Problems in Academic Research", Judith P. Swazey, Melissa S. Anderson and Karen Seashore Lewis, American Scientist Vol 81, 1993, p 542-553

P547:Faculty clearly felt that it is far safer to report suspected misconduct by a graduate student than by a colleague.

Barre NEA Teachers Contract 1990-1991

Article 3: Grievance Procedures 3.4(B) Should an informal process fail...then the grievance should be reduced in writing...step 1. the grievant may forward a written copy of the grievance to the building principal...

Barre NEA Code of Ethics (NEA Code of Ethics 1974) See JSCED Student Teaching Handbook Code above [34,38]

Citations of Constitutions, Statutes,or cases relied upon, and copies of pertinent texts of ordinances,academic due processes, reports,publications and other documenta -tion relied upon:

"Bell v Burson", 402 US 535, 541,542 (1971)
"...substance, not bare form to determine whether constitutional minimums have been honored." at 541
"...the hearing must be meaningful, and appropriate to the nature of the case." at 541-2"...a hearing which excludes consid-eration of an (single) element essential to the decision...does not meet (Due Process Clause) standards.' at 542

"Bobilin v Board of Education, State of Hawaii" 403 F.Supp. 1095 (1975) 1103-05
"and while subtler forms of coercion have replaced the blatant methods of subjugation practiced in the ante-bellum South, these

practices are no less effective than their older counterparts." at 1342

"...for a court to conclude that involuntary servitude has occurred: "(1) one person providing work or service for another; (2)under some type of compulsion or coercion."at 1343

"Board of Curators of the University of Missouri v Horowitz", 435 US 78 (1978)

"...determination whether to dismiss a stu-dent for academic reasons requires an expert evaluation of cumulative information..." at 90

"Respondent alleges that the school applied more stringent standards in evaluating her performance than other students..." at 92 [7]

"Respondent contends that the petitioners failed to follow their own rules respecting evaluation of...students....The District Court specifically found that "the progress status of [respondent] in the ...school was

evaluated in a manner similar to other similarly situated students, with the exception that the [respondent's] docent ...went to even greater lengths to assist [respondent] in an effort to obtain her M.D. degree..." 92 [8].

"Considering all of the evidence presented, the Court finds that the grading and evalu-ation system of the ...school was applied fairly and reasonably to plaintiff, but that the plaintiff did not satisfy requirements..." 95 [3]

"...in its assumption that characterizations of the reasons for a dismissal as "academic" or disciplinary" is relevant to the question of what procedures are required by the Due Process Clause." 97

"...Like the traditional disciplinary case, the determination of whether plaintiff did or did not comply with the school regulations is a matter of fact....scholastic standards are not involved,but rather disputed facts concerning whether plaintiff did or did not

comply with certain school regulations" 106

[20]"The Court's reliance on labels, moreover, may give those administrators who are reluctant to accord due process to their students an excuse for not doing so" 106 [21]

"In such cases,a talismanic reliance on labels should not be a substitute for sensitive consideration of the procedures required for due process." 106

"A court's characterization of the reasons for a student's dismissal adds nothing to the effort to find procedures that are fair to the student and the school,and that promote the elusive goal of determining the truth in a manner consistent with both individual dignity and society's limited resources." 107

"Gaspar v Bruton" 513 F 2d 843 (CA10 1975)

" 6 A.L.R. 1533 "

"...their decisions are conclusive, providing that their action has been in good faith and not arbitrary" at 850

"Courts have historically refrained from interfering with the authority vested in school officials to drop a student for failure to maintain prescribed scholastic rating...absent a clear showing that the officials have acted arbitrarily or have abused the discretionary authority vested in them" at 850

"The court may grant relief, as a practical matter, only in those cases where the student presents positive evidence of ill will or bad motive." at 851

"Goss v Lopez", 419 US 565 (1975)

""Disciplinarians, although proceeding in utmost good faith,frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process." at 580

"Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him, and if he denies them,an explanation of the evidence the authorities have and an opportunity to present his side of the story."at 581

"We should make it clear that we have addressed ourselves solely to a short suspension, not exceeding 10 days.Longer suspensions, or expulsions for the remainder of the school term, or permanently, may require more formal procedures.Nor do we put aside the possibility that in unusual situations,although involving only a short suspension, something more than the rudimentary procedures will be required." at 584

"Jeffries v Harleston", 828 F.Supp 1066 (S.D.N.Y. 1993), 1068,

"...nor does the Constitution protect the right of professor to teach patently absurd and wholly fallacious theories to class" at 1071

"...with the conduct of the University officials who did not act,then acted for the wrong reason, then were dishonest about their motivations in testimony..." at 1072

"...We conclude that the defense of qualified immunity is not available to the defendants,in that they violated clearly established statutory or constitutional rights of which a reasonable person would have known...' at 1072

"...speech critical of the government is precisely the kind of speech that the first amendment was designed to protect...where the statements involved so clearly touch on matters of public concern, the government is required to demonstrate interference with the efficient functioning of the workplace" at 1087

"[t]he inappropriate or controversial character of a statement is irrelevant to the question of whether it deals with a public concern.[D]ebate on public issues should be uninhibited,robust and wide open, and...may well include vehement,caustic and sometimes unpleasantly sharp attacks on government and public officials.Just as erroneous statements must be protected to give freedom of expression the breathing space it needs, so statements criticizing public policy and implementation of it must be similarly protected." at 1090-91

"The defendants retain the full and unqualified right and responsibility to discipline the plaintiff in response to improprieties or behavior...as long as in doing so the defendants do not violate the United States Constitution." at 1096

"Joint Anti-Fascist Committee v McGrath",341 US 123,168 (1951) "An "appropriate" governmental "determination" must be the result of the process of reasoning.It cannot be arbitrary

fiat contrary to known facts...Where tha act of an official plainly falls outside of the scope of his authority, he does not make that act legal by doing it and then invoking the doctrine of administrative construction to cover it." at 136

"The doctrine of administrative construction never has been carried so far as to allow administrative discretion to run riot." at 138

"This court has never held that... administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution" at 161

"...a fair hearing upon the fundamental facts" at 162

"...summary administrative procedure may be sanctioned by... obvious necessity.But these are so rare as to be isolated" at 168

"The forum itself must be one which is prepared to receive and consider all that he offers which is relevant to the controversy." at 109[16]

"In such cases, the Board of Education will have to ascertain the law as well as ascertain the facts...they must act in good faith ...always giving a fair opportunity to those who are parties to the controversy..."at 170[17]

"The validity and the moral authority of a conclusion largely depend on the mode by which it was reached.Secrecy is not congenial to truth seeking and self-righteousness gives too slender an assurance of rightness."at 171 "Keyishian v Board of Regents", 385 US 589 , 601-603

"The intricacy of the plan and the uncertainty as to the scope of its proscriptions make it a highly efficient in-terrorem mechanism.It would be a bold teacher who would not stay away as far as possible from utterances or acts which might

jeopardize his living by enmeshing him in this intricate machinery." at 580

"Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore of special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." at 603

"The essentiality of freedom in the community of American universities is almost self evident...Scholarship can not flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study, and to evaluate...otherwise our civilization will stagnate and die." at 603

"The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed." at 604

"Klein Independent School District v Mattox", C.A.5 (Tex) 830 F2d 576(1987)

"The Secretary of Education is empowered to enforce the various provisions of FERPA. 20 USC 1232g(f).An educational agency or institution that unlawfully releases a student's records may lose federal funding.20 USC 1232g(b)(1).That is the only express remedy provided by the statute. FERPA neither specifically provides for private cause of action, nor does it legislative history indicate that its drafters intended one." at 579

"...we believe that, under the balancing test, even if she did have an interest it is significantly outweighed by the public's interest in evaluating the competence of its schoolteachers." at 580

"Mahavongsanan v Hall", 529 F. 2d 448 (CA 5 1976)

"Misconduct and a failure to attain a standard of scholarship can not be equated" at 450"Matthews v Eldridge" 424 US 319

"...the identification of the specific dictates of due process generally requires consideration of three distinct factors:First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value,of additional or substitute procedural safeguards, and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." at 335

"[D]ue process is flexible, and calls for such procedural protections as the particular situation demands."

"Norwood v Slammons", W.D.Ark 1991 788 FSupp 1020

"Palko v Connecticut", 302 US 319,327

"The hearing, moreover, must be a real one, not a sham or a pretense." at 327

"Regents of the University of California v Bakke", 438 US 265, 311-12, 319 n 52, 404

"...the purpose of helping certain groups whom the faculty at the Davis Medical School perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like the respondent..."at 310

"It is an atmosphere in which there prevail "the four essential freedoms" of a university-to determine for itself ON ACADEMIC GROUNDS (petitioners emphasis) who may teach, what may be taught, how it may be taught, and who may be admitted to study" at 312

"If the applicant can establish that the institution does not adhere to a policy of individual comparisons....the presumption of legality might be overcome, creating the necessity of proving legitimate educational purpose." at 319[53]

Fairness in individual competition for opportunities, especially those provided by the State, is a widely cherished American ethic"

supra

"Tarkla v Cunningham", 917 F.2d 890 (5th Cir 1990)

"Student grades, as reflected in educational records, can only be inaccurate or misleading, if they do not reflect what the grader intended or if they are mathematically incorrect."

at 891

"Tinker v Des Moines School District", 393 US 503, 506 (1969)

"It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" at 506

"That they are educating the young for citizenship is reason for scrupulous protection of the Constitutional rights of the individual, if we are not to strangle the free mind at its source and teach the

young to discount important principles of our government as mere platitudes" at 507

"Any departure from absolute regimentation might cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance.But our Constitution says we must take this risk...; and our history says that it is this sort of hazardous freedom-this kind of openness, that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society." at 508-509

"In our system, state operated schools may not be enclaves of totalitarianism ...students in school as well as out of school are persons....students may not be regarded as closed-circuit recipients of that which the state wishes to communicate ..." at 511

Before the Supreme Court of Vermont May 10, 1994(Oral Argument Read to Court THIS Date)

1. As an Appellant-Plaintiff pro-se, I ask the Court to listen carefully to a common petitioner without filtering and sifting my language, not the language of practiced attorneys.

2. This is a Public Access to Documents Lawsuit, on Appeal.

3. The Lamoille Superior Court failed to indicate, in its decision before the Supreme Court, how the Appellee-Defendants complied with Access to Public Document TIME and CONTENT requirements per my 7 Aug 92 1 VSA 315-320 request for Due Process documentation.

4. Without indicating a document which complied with the Public Access Laws, the Lower Court claimed, under Goss v Lopez and Horowitz v Missouri, that "due process" appropriate to my circumstances was provided, therefore NO DOCUMENT was required to meet Time and Content provisions of my 1 VSA 315-320 request.

Thus, the Defendants' claim that no document existed or exists is valid, as is their assertion that esoteric, professional judgement provided appropriate "due process".

The Lamoille Superior Court made FOUR errors:

A. The College's Accreditation Contract with the Regional Accreditation Agency, the New England Association of School and Colleges, as specific contract governing among other things the Federal Loan Guarantees behind the $3100 VSAC funding spent by this student on his Graduate Internship, also governs the academic policies and practices of the College, requiring specific policies regarding the "...admission, retention, expulsion and re-admission..." of students in courses of studies, said policies clear, concise,written, published and readily available to the student. (NEASC pg 17,section 4.41)

That document is the Johnson State College Code of Conduct 1991-92, the document under request, and reasonably "...known by government officials by that name or any other name" ((1 VSA 318 (a) (4)).

"In such cases, the Board of Education will have to ascertain the Law and also ascertain the facts." (Anti-fascist v McGrath, @ 170).

B. In citing Goss v Lopez, the Lower Court erred in presuming that Goss v Lopez is the DE

MAXIMUS process application standard, not the DE MINIMUS foundation regarding student hearings. Thus "...some sort of hearing...", as the "appeals" at the College were, which the Lower Court cites as adequate to prevent error, are inadequate.

Goss v Lopez grants "flexibility", under Eldridge v Matthews (actually Morrissey v Brewer), to provide maximum protection as the circumstances mandated.The Court, in concluding Goss v Lopez, was precise in this matter:

"We should make it clear that we have addressed ourselves solely to a short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.Nor do we put aside the possibility that in unusual situations, although involving only short suspensions,something more than the rudimentary procedures will be required." (supra, at 584)

If my "suspension" from the High School, an action that fails the minimal procedural tests of the Goss v Lopez MINIMUM require-

ments, failing as well the Vermont 4300 Regulations of the Vermont Department of Education regarding suspensions, is not "..unusual circumstance...", then I am hard pressed to conceive of what the Court would consider to be "unusual".

The ex-post facto "suspension" that fails Goss v Lopez is the "probable cause" listed on the College's expulsion letter of April, 1992.

There is no suspension in force through current date. The actions of the College are no more than gross "ultra vires" expropriation of my property and liberty.

"Fairness can rarely be obtained by secret, one sided determination of facts decisive of rights" (supra at 580)

The 9 April 92 JSC Department of Education meeting regarding the 27 Mar-2 April 92 grading frauds is a secret meeting.

"Secrecy is no congenial to truth seeking, and self-righteousness gives slender assurance of rightness" (op cit).

The April 27, 1992 "suspension of internship" meeting at Spaulding High School is a secret

meeting.

"Disciplinarians...frequently act on the reports and advice of others...the facts and the nature of the conduct under challenge are often disputed.The risk of error is not at all trivial..."

The Graduate Committee "hearing" of 28 May 92 is created, molded, prompted, conducted and concluded "...on the advice of others."

C. In citing "Horowitz", the Superior Court assumed, despite the overwhelming body of evidence to the contrary, that the esoteric, academic nature of the dismissal and /or the esoteric, academic process mandated minimal process. Without examining this "academic" assumption, as detailed in the then Plaintiff's documents, the Lower Court failed to notice that the dismissal was of a disciplinary nature, not an academic issue.Sans formal process, per the Code of Conduct, the document sought, the dismissal is an "ultra vires" expulsion shielded from discovery by the "ersatz academic due process" the Appellees substituted.

1) When dismissed, this student was neither on academic probation, nor subject to academic

remediation, nor legally suspended from the High School, nor under any other disciplinary cloud, social or scholastic, misdemeanor or felony.

2) A singular academic failure, i.e., a failed test, late homework or an incomplete assignment, is hardly a traditional cause for a "one-strike-you're out" expulsion.

3) Alleged violations of rules, codes,laws or moral ethics are disciplinary charges that do lead to summary dismissal, pending appeal.

"In such cases (conduct related behaviors of students in good standing) a talismantic reliance on labels should not be a substitute for the sensitive considerations of the procedures required by due process.When the facts disputed are of the type susceptible of determination by third parties, as the allegations about respondent plainly were (the High School "ethics code" must be extant),there is no more reason to deny all procedural protection to one who will suffer loss than there was in Goss v Lopez, and INDEED there may be good reason to provide more protection (the new aspects of the Horowitz appeal process that aid-

ed the respondent, Horowitz at102;administrative and administrator reluctance to afford due process,supra at 106 [21]... Justice Marshall (in dissent).

" Like the traditional disciplinary case, the determination of whether the plaintiff did or did not comply with school regulations is a question of fact.Most importantly, in determining this factual question, reference is made to a standard of achievement in an esoteric field. SCHOLASTIC STANDARDS ARE NOT INVOLVED, BUT RATHER DISPUTED FACTS concerning whether the plaintiff did or did not comply with certain school regulations.These issues readily adapt themselves to determination by a fair and impartial 'due process' hearing." (supra, at 106, [20])

Unless the rules,regulations, moral ethics codes of the teaching profession are now and then "esoteric secrets",the allegations against me are readily determined under the Disciplinary Procedures of the Code of Conduct, the requested, sought document.

Complete "academic prerogative" outside of true academic measure is not allowed, by mor-

als or law.

4. No measure of the Appellant's clinical ability to teach history at the High School is before this Court now, nor the Lower Court then. This failure to measure attests not the student's clinical ability, but the abject failure of the professional monitoring system required by legal contract(s).

With an initial label, false, of "English Language incompetent", the measuring process slid downhill to the 9 April 92 meeting.A full hearing process was mandated by the circumstances, and this mandated "flexibility", the clear intent of the Morrissey v Brewer standards, was avoided by the College, and by misinterpretation, misapplied by the Lower Court.

There are only contradictions, not parallels, between my case and Horowitz.

The Lower Court fell into the trap Justice Marshall warned of:"A Court's characterization of the reasons for a student's dismissal adds nothing to the effort to find procedures that are fair to the student and the school, and that promote the elusive goal of determining truth (the school's nominal mission) in a man

-ner consistent with both individual dignity and society's limited resources." (Horowitz 107, in dissent).

D. The Lower Court, relying inaccurately on Defendant Hahn's expertise when Dr. Hahn. as the College President states that no due process document exists (that is, the Code of Conduct is not the Due Process document), gives full force approval to the "academic" review process substituted "ad hoc", said substitution allegedly because no pre-existing process was available. Thus the Lower Court sanctioned the "ersatz process" that the College utilized.This was error because:

1) The Court trusted that the review meetings were fair, comprehensive, academically sound and complete, and that Dr. Hahn would ensure true academic due process.

2) The Court trusted that the review process was independent of incestuous administrative bias and scholarly portentous fear of future academic and legal liabilities accruing to the government based on the review process itself.

3) The Court trusted that each "hearing officer" was free to make an independent judgement based solely on the facts before that officer, and that no prejudicial pressures could or would be brought to bear against the official making the decisions.

4) The Court trusted that no "third party" manipulated and controlled the process of review/appeal, that no "regent" behind the appeals venues existed. One did, and this "ex-officio" authority was able to violate the foundation values and norms of administrative process (notice of government action, precision of charge and contrary government evidence, a forum prepared and qualified to both hear the defendant's contentions and act substantively on those contentions, and a forum which would, having directly heard the citizen,, act decisive of rights "Anti-fascist v Mc Grath, 341 US 123 at 169) by hiding behind a screen of so called academic prerogative.

The actions of the College, that is the government, in terminally dismissing the student are no more than Bills of Attainder supported by ex-post facto pseudo regulation and ersatz appeals procedures.

The College, that is, the government, may not operate in this totalitarian manner,a process proscribed by the Legislative Branch to itself, and thus all.

Unable to dismiss a 3.90 GPA Graduate Intern, and unable to legitimately find a disciplinary infraction in the Intern's morally sound, ethically framed and legally mandated grievance exposing academic fraud and felony child abuse, the College's Department of Education illegally and immorally expelled the student rather than deal with the facts of the matter. When the scope of the Education Department's errors became known to the College,the senior administrators, now the Appellee-Defendants, released the academic internal power to determine the truth to the "regent", now the "4th defendant", Paul Sutherland. Esq and/or Sutherland and Collins, Mr. Sutherland's law firm.

a) Sutherland built the Graduate Committee process, controlled the hearing and wrote the "Graduate Committee Report" of 2 June 92

b) Sutherland similarly manipulated the "Academic Dean Appeal Process", writing, on 16 Mar 93, the "Academic Dean Report" of 23 Mar 93, the latter (and/or former, since these are IDENTICAL reports) the basis of the "President's Review and Decision" of 11 June 93.

The "informal appeals process" that the Lower Court approved is a political sham,a pretense of procedure substituted by Defendants Carpenter and Sutherland for genuine Academic Due Process, said genuine process "...a precision instrument..." Joughin at 271.

"...Academic Due Process is able to teach something important about the nature of learning itself, because its action is so much like that which created the educational treasury it (Academic Due Process) guards..." (op cit)

"Academic Due Process is a precision instrument; It (Academic Due Process) has a specific applicability or jurisdiction; it (Academic Due Process) operates by established rules; it (Academic Due Process) concerns itself with

testable facts, and then tests them; it (Academic Due Process) is a demonstration of the human intellect at work, submitting tentative conclusions to comparisons with controls (through the consideration of evidences) and, while moving forward with a particular proceeding,it (Academic Due Process) tests its own working hypothesis by constant reference to the burden of proof.

A full scale application of Academic Due Process demonstrates powerfully the nature and use of the scholarly mind." (op cit)

Even if the Academic Due Process leads to embarrassment of the scholars charged with administering Academic Due Process!!!!!

Hearings must be genuine. "...not a sham, or pretense..." (Palko v Conn 333 US 257, at 273).

Under 1 VSA 315-320 the Defendants are obliged to surrender documents directly identified or known to the Defendants, and their legal advisors, to be essentially the documents under request.Only if the Courts can reasonably conclude, on the basis of the evidence before the Courts,that a governmental body con-

sisting of four (4) lawyers,four (4) educational Chief Executive Officers, three (3) department heads, and half a dozen senior educators, all licensed in their particular professions,thus knowledgeable regarding Due Process in the Educational jurisdictions which these professional control, were suddenly struck dumb and ignorant, can the Courts excuse the failure of the government to acknowledge the Due Process primacy of the College's Honor Code, the Johnson State College Code of Conduct 1991-92,the document sought under this suit.

What the Court is most likely to find, based on the evidence, is that this body of educational professionals, having been caught initially with their "hands in the moral/ethical cookie jar",meanspiritedly punished the witnesses of these fouls by false allegations, pre-emptive sanctions and punitive process, hoping to distract from the "crumbs of the crime" blatantly clinging to the coats and dresses of the educational experts.

CONCLUSION:

At issue, fundamentally, is whether the 14th

Amendment Rights of students AND teachers, rights affirmed in "Tinker v Des Moines" circumstantial to a Vietnam War protest also apply to Spaulding High School American History students protesting not a distant war but daily academic abuse in their own classroom.

At issue, fundamentally, is the question of whether procedure sufficiently formal, relative to the potential and actual sanctions available to the government, that is, the College Honor Code, the procedure document sought, was withheld, and thus Due Process denied."This institution shall be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor tolerate error as long as reason is free to combat it" Thomas Jefferson

"What then are the limitations of the freedom of the faculty?They are the limitations on independent thought. They could be nothing more than the laws of logic and the laws of the country"

Robert B. Hutchins in MacIver, op cit 223

"In such cases, the Board of Education must ascertain the law and ascertain the facts" (previous quote and reference)

"...these (Boards of Education) have,of course, delicate and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights." (Tinker v Des Moines, op cit at 507)

The Court is asked to carefully sift the facts in evidence and decide this appeal on it's merits.

The Appellant-Plaintiff's entire graduate career was administered outside the rules governing graduate school behaviors.

Within the Graduate Program,the Graduate Internship was corrupted by official neglect and abuse.

The Graduate Internship was subjected to an "ultra vires" suspension, this post-dated "su-pension" the probable cause for the "ultra vires" expulsion .

From this "poisoned tree" of illegal and immoral acts falls the novel and oft byzantine "appeals process", a "poisoned fruit".

In order to conceal with the evident secrecy

the truth.

"...in our system, undifferiented fear or apprehension of disturbance is not enough to overcome the right of freedom of expression..." (Tinker, op cit at 508"

Novel appeal procedure is allowed if a) none exists and b) if the new process aids the respondent student. (Horowitz, op cit at 92-93)

Invoking administrative construction to cover illegal acts does not legalize the acts concealed (Anti-fascist v Mc Grath at 136)

"...The validity and moral authority of a conclusion depend on the mode by which it was reached (supra, at 171)"

Under the exact circumstances of this citizen's Graduate Career a most formal,adversarial Due Process was required,per the document concealed, the College Honor Code, as well as additional ethical,moral and legal precedents. On these errors, extant in the Superior Court findings and judgements under appeal,I ask the Vermont Supreme Court to reverse and set for trial,and in the process to strike the "Horowitz Precedent" which allowed duality of process, rather than legal proportionality, to

govern the government's behaviors.

May 10, 1994 In Morrisville, Vermont:

John Lucas pro-se

PROCESS SUMMARY;FACTS V DECONSTRUCTIONS

No less than, and perhaps more than legal determinations, traditional, genuine American Academic Due Process rests on evidences and theories surviving the tests of the evidences.

Fact: Not one of the teacher-student's grievances regarding governmental academic fraud has been substantively or constructive -ly handled by the educational governments; the first is destroyed, the second suborned to an immediate counter grievance, the third is deflected by Regent Sutherland.

Fact: Teacher-student allegations of gross professional grading misconduct by Richard Wilgoren, filed within Academic Due Process frameworks, and A) unrefuted internally or externally by Wilgoren, who B) in his si- lence,post full publication, has not been the subject of a professional fitness-to-teach process by his peers, said allegations have successfully passed through the stringent Academic Due Process test and are now facts under Academic,thus legal rules.

Fact:The myriad concealment, mutilation, destruction, plagiarizing and forging of documents within the academic and legal portions of this case include, but are not limited to the following: the "2nd English Competency Test": internship "pre-placement interview" notes: state mandated,signed internship contract (between JSC and SHS); 3rd semester mid-term student progress reports of the SHS American History students; legally mandated written suspension notice to teacher-student; teacher-student's 8 page written report of the "grading incident"; student interviews conducted by SHS Psychologist Downs and report(s) of same;attendants and substance of the 27 Apr 92 "post-suspension" meeting/ hearing at SHS (discovered Sept 93);child-abuse complaint referral notices from Health and Human Services Commissioner to SHS and VtDoE;SHS ethics,morals and regulatory codes governing student-teachers; grievance procedures allegedly violated by teacher-student; and copies of 16 VSA 12:Oaths signed by any educator involved in the case before the Courts.

Fact: Despite the concealment of the SHS Teacher Grievance Policy, the method employed by the teacher-student to notify the authorities and parents to the then grading irregularities is consistent with both the SHS process as well as the JSC student grievance policies as published, said publications in the case file as discovered by teacher-student despite official inactions and hindrances.

Fact: Not by implicit or explicit understanding, nor by oral or written agreement, has the teacher-student entered into a Bond Servant Contract with the Political-Educational Establishment, JSC, SHS or VSCC, whereby the Bonded Servant, in exchange for his Constitutional Rights of Free Speech, Peaceable Assembly,Petition of Grievances, or any other Guaranteed Right, acquires any property of tangible,real value, a Teaching License, a Masters Degree, or any other comparable benefit.

Fact: By virtue of the unsupervised Graduate Teaching Assistant's labors performed involuntarily by the teacher-student, labors he was deceived into paying for while others were

paid for the actual work performed, in a situation where the public work performed is an employment, not a corvee labor, contract, and where the methods of grievance and redress were substantially withheld and denied, being also absent a criminal conviction of the teacher-student, the Political-Educational Establishment,(JSC,SHS and VSCC), has explicitly and implicitly, with both oral and written contracts to bind all parties, created a de facto as well as de jure Involuntary Servitude Condition enslaving the teacher-student,a slavery of contemporary quality not lacking in many of the historical aspects of this odious practice.
Fact: BY ruling of the Vermont Supreme Court 23 Aug 94, the condition of enslavement bears a Vermont and Federal seal, repealing the 1st Article of the 1st Constitution in the Land specifically prohibiting enslavement, Vermont Constitution Chapt.1, Art 1 , 1777, 1786
Unable to utilize a genuine American Academic Due Process in its duties to this teacher-student, the College, its controlling corporation and the High School, have, since 2 Oct 92

concealed their own defects, academic and legal, behind a rolling series of administrative constructions, each construction ever larger to cover the flaws of its predecessor. In order to accomplish this feat, the Political Educational Establishment (JSC,SHS and VSCC) need only to control the labels and the free intellects of those involved. By deconstruction, "English Competency" becomes "Philosophical Orthodoxy","mandatory" means "optional","Graduate Intern" equates to "Graduate Teaching Assistant", "complaint" equates with "sedition","leave of absence" melds to first "suspension", then "expulsion", 8 page "grading incident" report becomes 6 page "student report", "appeal" means "remediation", "remediation" equates with "compulsory negotiation",3rd party "draft letters" become expert, esoteric "appeal decisions", "hearing" devolves to "meeting", "process" is simply "motion". Label gun in hand, the educational experts and authorities also revise the Buckley Amendment, the Family Education Rights and Privacy Act of 1974, re,olding this law into

an omnibus Federal "Feinberg Contract", classifying "...all information..." in the classroom as "...confidential...", the property of the classroom teacher, who "...must be consulted in all matters relating to the sharing of student information".

Thus, talking out of school is as dangerous as talking up in the classroom. In fact, talking at all is suspect. As the record clearly demonstrates, the number of junior and senior educators who are, "...not at liberty..." to contribute,is totality. This proscription applies especially to "Constitutional issues",explaining neatly why no one takes the 1968 Oaths for Educators, 16 VSA 12.(LaC 1 Nov 93 Plaintiff's Supplimentary Brief, VtSC Exhibit 3)Thus, the advocates of "in-terrorem administrative practices" have subverted 25 years of Federal Court oversight in Vermont education, simply ignoring their requirements under 16 VSA 12; Oaths. (Evidence as above)

This teacher-student's enslavement was unavoidable as well as predictable.He listened to a different set of authorities.

"This institution will be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor tolerate any error as long as reason is free to combat it." Thomas Jefferson

"If the teacher is not respected, and the students are not well cared for, great calamity will result, regardless of how clever one is. This is the crux, or the enigma, of the mystery." Lao Tsu

The thrust of the Supreme Court decisions beginning with "Keyishian v Regents" through "Bakke v Regents" is to balance the rights of educators and their public institutions with the rights of the students to individually seek knowledge and gain viable learning experiences.Since the state, the government, is so intimately entwined in the process, certifying, financing and regulating public education, the goals of the institution and those of the individual, when there is conflict, must be sorted and balanced by the Courts.

Unless the professed rights of the students, groups or individuals, threatens to substantially disrupt the nominal activities of the educational institution, the individual or group student right to speak out, even foolishly, is an integral part of the process of learning.

On the other hand, the Discipline of the Academic Due Process does not allow the educators, students once with the right to speak out with abandon, to promote as educators the foolishness they must tolerate from their students. As educators, they must "...ascertain the law as well as ascertain the facts...", both within and without their disciplines. The power and convenience to control the labeling mechanisms is fraught with temptation. Within "Horowitz", the Court has mandated that "esoteric expertise" does not equate with other than license as granted through the traditional Academic Due Process.

Thus professors may not shrink from embarrassing, uncomfortable,disputatious student-teache discourse by deconstructionist

re-labeling, professional proscription or abject flight and surrender. Nor may professors neglect their students, the mentorship of their students; nor may teachers, measuring the student to defect, walk away without substantive attempts at remediation.

Professors may not play Academic Due Process as a "sudden death" quiz game.Nor may they change the rules, per "Horowitz", in the middle of the game, unless the object of the change is to actually assist the student to get to the academic goal.Nor may teachers raise the goal posts for some and lower the goal posts for others. Academic Due Process mandates a level playing field, not a field of leveled players.

The Defendants cite of the "4 Freedoms" in "Bakke" is their expansion of the university's right to determine which students advance. The case before the Court indicates that the Defendants are expanding "Bakke" to MATRICULATED students, creating an arbitrary, completely capricious "rationale" to fail students who have completely mastered all of the prescribed course work.This is not Academic

Due Process (LaC: Academic Due Process, VtSC: Appellant's Memorandum of Law).

The flaw, as Justice Thurgood Marshall warned in his partial dissent in "Horowitz", was that the keepers of the flames of knowledge held the label gun.Relying on professional good behavior,absent the Constitutional liberties and restraints which promote good behavior throughout the society, was to invite, forecast Justice Marshall, conflicts of interest over license versus licentiousness, which the conflicted could resolve, as experts, outside of Constitutional purview.(Appellant's Oral Argument, VtSC).

The Court ruled in "Keyishian" that in-terrorem administration buoyed by the "Feinberg Contract" was so restrictive of campus speech as to be undemocratic. Vermont cancelled its "Feinberg Contract" with teachers, substituting 16 VSA 1 Oaths.

Now all teachers in Vermont were Constitutional Officers.

Except, as in this case, those who failed to take the oath, understand the oath, and or act professionally under the oath.

Johnson State College, Johnson, Vermont, has been the premier teacher training institution in Vermont since the early 19th century. In no contemporary, current or past JSC publication, syllabus or lesson plan is 16 VSA 12, Oaths, nor the duties and responsibilities of educational Constitutional Officers, under 16 VSA 12, even obliquely mentioned.

In "Tinker", the Court ruled that the risk of a dispute breaking out on the campus was the Constitutional State of the campus, and the risk to be born by those operating the schoolyard gate.But without Constitutional Officers at the schoolyard gates, disputes in this case were extinguished.

In "Goss v Lopez", the Court set minimum standards for deprivation of rights under the public school contracts.Without Constitutional Officers, notice of student defect, student capacity to challenge, and substantive re-affirmation of charged defect are not required, orally or on written form, in this case.

And finally, in "Horowitz", genuine Academic Due Process, that process, in the profession of teaching, which allows for a Constitutional

flexibility of procedures relative to time, circumstance and venue,granting prerogative to Constitutional Officers also esoteric experts in education, is deconstructed,creating a gross institutional process failure providing neither Constitutional Officers nor esoteric experts.

No process decisive of property and liberty rights is so flexible as to transmogrify,as an aberrant apparition,each and every time the citizen attempts to defend his rights and deflect official proscriptions and punitive, putative sanctions.

Just the statement, that "...you did wrong...", absent specific charge and remedy, save expulsion, is abject, antithetical rejection of educational ethical, moral, and thus legal power granted by the Court's aforementioned educational rulings.

That a "third party" designed the ad hoc, de novo, instant and constant metamorphisms of "appeal", said "third party" then initiating,nurturing and determining the metamorphic

outcomes, is not the academic prerogative that "Horowitz" grants to esoteric experts, to the scholars for scholarly determinations of student capacity.(VtSC: Appellant's Brief)

As stated in the description of the case, the metamorphic outcome in this instance, a manipulative travesty of Constitutional power, the creation of Constitutional Officers, esoteric experts as well as "third parties", is no less than Vermont State Certified Involuntary Servitude.

Surely the Court's intent in "Horowitz" was not to provide a Constitutionally exempt culture within which students are the slaves of their scholastic superiors.

The course of study that this teacher-student entered was labeled "Masters of Education; Secondary Vermont Teacher's License Preparation, Social Studies."

The Vermont Court's reluctance to intervene, citing "Horowitz" precedents, is no more than a talsimanic reliance on the Defendants' self-applied esoteric labels.In effect, the Vermont

Courts have intervened in the scholastic process by failing to closely examine the facts, actions and behaviors beneath the labels, allowing for a redefintion of academic due process by rogue scholars and their allies.

The Courts have effectively re-labeled this teacher-student's Graduate Master's Degree Program as "pre-God".

The grossest dangers in "outcome based" instructional programming, with "God-like" rogue educational technicians preening their knowledge by predicting outcomes, in this case failure. are most apparent.

The Constitution can not support this erroneous methodology.

Signed this day, the 18th of November, 1994, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.

John Lucas

I Hereby certify that on this date, the 21st of November, 1994,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures, four (4) copies of this Writ of Certiorari, plus and additional copy, five (5) in all,to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service,Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing address of the Agent of Record of the Defendants,the law firm of Sutherland and Collins, P.C.

REPREMATICED 12/7/94 John Lucas

Supreme Court, U.S.
FILED
JAN 6 1995
OFFICE OF THE CLERK

No. 94-1034

In The

Supreme Court of the United States

October Term, 1994

JOHN LUCAS,

Petitioner,

v.

DR. ROBERT HAHN, DR. VINCENT CROCKENBERG, MR. STANLEY CARPENTER, all of JOHNSON STATE COLLEGE, JOHNSON, VERMONT,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Vermont

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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NOW COME Respondents, through their counsel, Sutherland & Collins, Inc., and file this Brief in Opposition to Petitioner's "Petition for Writ of Certiorari":

A. INTRODUCTION AND CONCISE STATEMENT OF THE CASE.

This case arises out of Petitioner's Spring 1992 academic dismissal from a graduate education degree student teaching program, following a grading dispute which occurred while Petitioner student-taught a high school class. Petitioner was a graduate student in the Education Department of Johnson State College (referred to below as "JSC"), a Vermont college. The graduate education degree program required Petitioner to complete a "student teaching" internship. Petitioner undertook to fulfill that requirement by teaching a Barre, Vermont history class under the supervision of a high school supervising teacher, who, beyond serving as Petitioner's supervising high school teacher, had no affiliation with JSC.

A grading dispute occurred between Petitioner and the supervising high school teacher as to grades to be given to the high school students in the class student-taught by Petitioner. The supervising teacher released grades, with which Petitioner did not agree. Rather than resolving the dispute by working with the high school administration, Petitioner wrote and mailed letters to the parents of the history class students, informing them that a grading "mistake" had occurred and other information. Petitioner also wrote a letter to his supervising high school teacher, which letter the high school principal also

reviewed and later described as "confrontational" and "extremely demeaning to an established professional". The incident led the high school principal to suspend Petitioner from the high school student teaching program due to "lack of professional ethics". The incident also led to Petitioner's expulsion from the JSC Education Department graduate program student teaching program, following a meeting with three Department officials.

Petitioner appealed the JSC Education Department decision and was afforded several levels of review, including meetings and review by the JSC Graduate Committee, the JSC Dean of Academic Affairs, and the JSC President.

During the pendency of these academic appeals, Petitioner inundated JSC officials with thirty-one separately filed document requests under the Vermont "Access To Public Records Act", 1 V.S.A. §§ 315-320. This law requires Vermont public agencies to produce copies of certain "public records".

In March 1993, Petitioner, acting *pro se*, commenced in Lamoille County Superior Court in Hyde Park, Vermont the lawsuit which gave rise to the petition under review. Petitioner filed that suit against Respondents, Dr. Robert Hahn (the President of JSC), Dr. Vincent Crockenberg (the Dean of Academic Affairs for JSC), and Stanley Carpenter (the general counsel for the Vermont States Colleges Corporation). The suit primarily alleged violations of the Vermont Access to Public Records Act, but also alleged Petitioner's federal due process rights had been violated.

Respondents filed a motion for summary judgment, which after Petitioner objected thereto and a hearing was held, was granted by the Lamoille Superior Court in an Order and Opinion dated November 29, 1993 (see Appendix to Writ of Certiorari at pages 12-16). Petitioner appealed that decision to the Vermont Supreme Court, which, following briefing and oral argument, issued an Order and Opinion dated July 15, 1994, affirming the entry of summary judgment and dismissal of Petitioner's complaint. (See Appendix to Writ of Certiorari at pages 3-10). Petitioner filed with the Vermont Supreme Court a motion for reargument, which motion was denied on August 23, 1994.

On or around November 21, 1994, Petitioner filed the pending petition for a writ of certiorari seeking review of the Vermont Supreme Court's final judgment, pursuant to 28 U.S.C. § 1257(a).

B. PERCEIVED MISSTATEMENTS OF LAW OR FACT SET FORTH IN THE PETITION.

Pursuant to Supreme Court Rule 15.1, Respondents identify the following perceived misstatements of fact or law set forth in the petition which may have a bearing on the question of what issues would properly be before the Court if certiorari were granted. The references given below to "Petition" refer to the pages in Petitioner's "Petition for Writ of Certiorari" where the referenced perceived misstatements of fact or law are made.

1. *Paul Sutherland, Esquire, is not a party to this matter.* (Petition, cover and pages 19, 20, 28, 29 and 31) Attorney Sutherland is an attorney who was consulted by

some of the JSC officials in responding to Petitioner's document requests and appeals, but he has never been a party to this action. The lower court decision and the Vermont Supreme Court decision which constitute the final judgment to which the Petition relates, reflect and confirm this fact. See Appendix to Writ of Certiorari at pages 4 and 12.

2. *Respondents deny that Petitioner's situation required that, under the Due Process Clause of the United States Constitution, he be granted more due process than that afforded him.* (Petition, pages 15-16, 26, 27, 28, 30, 39-41 and 43-57).

3. *Respondents deny that the referenced Vermont Department of Education Regulation 4300 applies to Petitioner's case.* (Petition, pages 11, 26, 39, 47, 48, 50-53 and 55). The Regulation does not apply to an academic proceeding such as the one involving Petitioner.

4. *Respondents deny that the Johnson State College "Code of Conduct" applied to Petitioner's case.* (Petition, pages 11, 45-46 and 48). The Code is inapplicable to academic proceedings such as the one involving Petitioner.

5. *Respondents deny Petitioner's claims that there was a "gross lack of mentorship" during his student teaching experience* (Petition, page 5); *that JSC's monitoring of that program was negligent or otherwise inappropriate* (Petition, pages 27 and 56); *and that Dr. Marilyn Page allegedly indicated in or around March 1992 that Petitioner might fail his student teaching internship.* (Petition, page 5).

6. *Respondents deny that Dr. Tilley of JSC allegedly agreed that the supervising high school teacher had engaged in "fabrications" which were "no less than academic fraud".* (Petition, page 7). Respondents also note that many of the alleged details concerning the grading incident referred to in the Petition, pages 6-8, were not presented to the State courts below.

7. *Respondents deny that there is any evidence presented that any JSC official allegedly informed Petitioner that he would be "black listed" with the Vermont Department of Education.* (Petition, page 12).

8. *Respondents also disagree with Petitioner's characterization of the April 9, 1992 letter from the Johnson State College Education Department* (see copy at Appendix to Writ of Certiorari, pages 18-19), *to the extent his characterization is inconsistent with the contents of the identified document.* (Petition, pages 12-13).

9. *Respondents deny that many of the alleged details concerning the May 28, 1992 Graduate Committee hearing were presented to the state courts below.* (Petition, pages 15-17).

10. *Respondents deny that Attorney Paul Sutherland was "posing as [Dr.] Towner" regarding any of the proceedings concerning Plaintiff.* (Petition, page 18).

11. *Respondents deny that Petitioner's January and February 1993 meetings with Respondent Crockenberg were "non substantive and evasive".* (Petition, page 19).

12. *Respondents deny that Attorney Paul Sutherland in his March 19, 1993 letter to Petitioner threatened Appellant with a "harassment lawsuit".* (Petition, page 20).

13. *Respondents deny that the March 23, 1993 appeal decision by the JSC Academic Dean is "inconsistent as to chronology and statements of fact".* (Petition, page 20).

14. *Respondents deny that Attorney Paul Sutherland was the "corporate agent of record" for any Respondent.* (Petition, page 21).

15. *Respondents deny that Petitioner was ever accused of "academic sedition"* (Petition, page 22) *or that Respondents only had the power as state actors to illegally proscribe, punish and steal.* (Petition, page 23).

16. *Respondents deny that at the October 19, 1992 hearing on the motion for summary judgment Respondents' counsel claimed that the issue was simply a grading matter over which the Vermont state court had no jurisdiction.* (Petition, page 24).

17. *Respondents deny that the Vermont courts failed to act on Petitioner's "motion to secure documents".* (Petition, page 24). Such motion was reasserted in Petitioner's motion to reargue the Vermont Supreme Court appeal and was denied by the Vermont Supreme Court in its August 23, 1994 Order denying Petitioner's motion for reargument, where the motion was reasserted.

18. *Respondents disagree with Petitioner's characterization of the Vermont Lamoille County Superior Court November 29, 1993 decision, to the extent Petitioner's description* (Petition, pages 25-26) *is inconsistent with the printed decision itself.*

19. *Respondents deny that Petitioner raised in any significant or substantial way in the proceedings below any alleged violations of the First, Fourth, Sixth and Thirteenth*

Amendments to the United States Constitution, Article 1, Section 9 of the United States Constitution or 20 U.S.C. §§ 1097 and 1232(h). (See Petition, pages iii, ix, 34-37, 41, 42 and 55-57).

20. *Respondents deny Petitioner's assertion that the Vermont Supreme Court rejected Petitioner's 180 plus page "voluminous case file" upon Appellees' motion.* (Petition, page 40). Petitioner's voluminous lower case file was entirely presented to the Vermont Supreme Court. The document which was stricken upon Respondents' motion before the Vermont Supreme Court was 180 page second brief (in addition to Petitioner/Appellants' Brief before the Vermont Supreme Court), which Petitioner presented to that court and labeled as a "Printed Case", which under the Vermont appellate rules properly refers to a document solely containing copies of pertinent documents presented to the lower court, analogous to the "joint appendix" in proceedings before this Court.

21. *Although it is part of the Appendix to Petitioner's Petition, Respondents deny that Petitioner fully read or presented to the Vermont Supreme Court the portion of Petitioner's "Appendix to Writ of Certiorari" set forth at pages 71-88 of that document.* Although Respondents understand that Petitioner has set forth this section merely to indicate a text Petitioner claims he read to the Vermont Supreme Court, Respondents also disagree with many of the statements of "law" or "fact" set forth in that portion of the Appendix.

22. *Although it is not part of Petitioner's main Petition, Respondents disagree with Petitioner's statement of alleged*

"facts" in the portion of the Petition Appendix entitled "Process Summary – Facts v. Deconstructions". Respondents also believe that that portion of the Appendix should not be considered as part of Petitioner's Petition, because to do so would allow Petitioner to circumvent the Supreme Court Rule 14.4 and 33.3.a page limitations.

C. GROUNDS FOR DENYING PETITIONER'S PETITION FOR A WRIT OF CERTIORARI.

Of course, this Court's review by writ of certiorari is not a matter of right, but subject to judicial discretion. Supreme Court Rule 10.1; *Hammerstein v. Superior Court of Calif.*, 341 U.S. 491, 492 (1951). The following reasons are among the several reasons why such discretion should be denied in this case.

1. *Petitioner has failed to present with sufficient brevity and clearness whatever materials are essential for a ready and adequate understanding of the points requiring consideration.* This is a sufficient reason for denying the Petition. Supreme Court Rule 14.5.

2. *This matter does not present the "special and important reasons" necessary for the granting of a writ of certiorari.* Supreme Court Rule 10.1. Certiorari is only granted where settlement of the principles involved is *"of importance to the public as distinguished from that of the parties,* and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal". *National Labor Relations Board v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951) (quoting, *Layne and Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393) (emphasis added); see also *Rice v. Sioux City Memorial*

Park Cemetery, Inc., 349 U.S. 70, 74 (1955) (noting "special and important reasons" within former Supreme Court Rule 17, relating to the granting of certiorari, relates to problems "beyond the academic or episodic"). The private dispute in issue here has little bearing to larger public issues, especially where the implicated due process principles are well delineated by this Court's former decisions. See Section C.3, *infra*.

3. *The Vermont Supreme Court's decision does not conflict with applicable decisions of this Court.* Under Supreme Court Rule 10.1(c), a factor weighing towards the granting of a petition for a writ of certiorari is where the state court has decided a federal question in a way that conflicts with applicable decisions of this Court.

That result has not occurred here. The Vermont Supreme Court correctly ruled that this case involved academic performance issues as, "[t]he records show that Plaintiff's handling of the grading disagreement prompted JSC's action, which was based on doubt about Plaintiff's ability to adhere to ethical standards and to cooperate with superiors in the school setting". *Lucas v. Hahn*, 94-015, Slip Op. at page 4 (Vt. Supreme Court July 15, 1994) (see Petitioner's Appendix at pages 4-10). See also *University of Missouri v. Horowitz*, 435 U.S. 78, 91, n.6 (1978) (noting that, in determining whether to dismiss a medical student on an academic basis, non-academic factors such as personal hygiene and timeliness may be as important in determining whether a student will make a good medical doctor). The Vermont Supreme Court then appropriately applied the settled academic due process principles espoused by this Court in *Horowitz, supra* and *Regents of the University of Michigan v. Ewing*, 474 U.S. 214,

222-228 (1985). The state court rightly found that formal judicial type hearings are unnecessary for academic hearings because such academic determination "requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making". *Lucas v. Hahn*, Slip Op. at page 5 (quoting *Horowitz*, 435 U.S. at 90). The Vermont Supreme Court then correctly concluded that under the facts Petitioner had been afforded appropriate due process:

> Plaintiff was given adequate pre-deprivation notice and an opportunity to be heard. He was clearly notified in advance of the reason for the hearing with the three education faculty members. Plaintiff does not dispute that he sent the letters to his supervising teacher and students; he used the informal meetings with JSC staff to explain his actions. Moreover, plaintiff does not contend that he was ignorant of the student-teacher program policies regarding confidentiality, respect for supervisors, and appropriate channels for airing disputes. Therefore, he received adequate notice of the nature of the proceedings and an opportunity to make his case to the individuals empowered to decide his case. JSC made available to plaintiff several levels of review before different members of the JSC faculty and administration, which included opportunities for plaintiff to present his case again. This array of procedures sufficed to minimize the risk of erroneous deprivation resulting from JSC's academic decision.

Lucas v. Hahn, Slip Op. at page 5. (See Petitioner's Appendix at page 8).

Indeed, in this case Petitioner was permitted extensive opportunity to present his view of the incident. The three panel Education Department rendered its decision only after they provided Petitioner with an informal hearing. Thereafter, Petitioner was allowed to appeal the Education Department's adverse decision to the JSC Graduate Committee, and permitted two extensive meetings with JSC's Dean of Academic Affairs, before the Dean issued his decision. Petitioner was provided an appeal of the Dean's decision with Respondent JSC President Robert Hahn, who himself conducted an extensive review. Petitioner was permitted extensive consideration at each stage of the academic appeal. For example, at the final stage of the academic appeal, JSC President Hahn did not render his decision until after he had reviewed Petitioner's letter to his high school supervising teacher, an 8 page document presented by Petitioner to the JSC Education Department, and the April 9, 1992 JSC Education Department decision; met with the Education Department members, reviewed their meeting with Petitioner and statements made in that meeting; met with members of the Graduate Council and discussed statements made in their meeting with Petitioner; met with the Academic Dean and reviewed with him the contents of Petitioner's two meetings with him; and conducted a detailed review of the entire correspondence between Petitioner and various members of the college spanning the time frame April 1992 through May 1993. See Petitioner's Appendix at pages 31-32.

Thus, considering the nature of the JSC proceedings and the procedures afforded Petitioner, the final judgment under review is entirely consistent with applicable

decisions of this Court. There is no substantial federal question to form the basis for review by certiorari by this Court, because Petitioner's contention of invasion of constitutional rights has been settled by previous decisions of this Court. See *Utley v. St. Petersburg*, 292 U.S. 106, 111-112 (1934).

4. *The Petition does not present any new unsettled important questions of federal law.* As described above, the case under review falls clearly within the framework of this Court's prior academic due process decisions. Therefore, the Petition does not present a situation where a state court has decided an important question of federal law which has not been, but should be, settled by this Court. Supreme Court Rule 10.1(c).

5. *Petitioner failed to properly assert before the state courts several of the federal questions Petitioner now seeks to raise in his Petition for Writ of Certiorari.* In seeking review by this Court of a state court decision, a Petitioner must establish that there is "no doubt" from the record that a claim under a federal statute or the United States Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim. *Webb v. Webb*, 451 U.S. 493, 501 (1981). The state court records in this case do not show that Petitioner properly raised in state court any alleged violations of (a) the First, Fourth, Sixth, and Thirteenth Amendments to the United States Constitution; (b) Article 1, Section 9 of the United States Constitution (prohibition against bills of attainer and ex-post facto laws); or (c) 20 U.S.C. §§ 1097 and 1232(h). (See Petition, pages iii, ix, 34, 35-37, 41, 42, and 56-57).

Further, the record is clear that neither of the lower courts addressed these allegedly raised federal issues in their written decisions. See Appendix at pages 4-16. Therefore, the state courts did not issue any opinions in conflict with any prior decisions by this Court as to these federal issues. Thus, even if these federal issues were adequately raised below (which Respondents deny), the fact they were not actually considered and decided by the state courts should weigh against granting of Petitioner's Petition.

6. *To the extent Petitioner seeks this Court review of the state court's resolution of the Vermont Access To Public Records Law issues raised below, this Court lacks jurisdiction to do so.* It is unclear from the Petition as to whether Petitioner seeks to have this Court also correct alleged misapplications of the Vermont Access To Public Records Act by the Vermont Supreme Court. To the extent Petitioner seeks such review, this Court lacks jurisdiction, as this Court is not one of general jurisdiction with the power to correct alleged errors in applying state law in state court proceedings. *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 837 n.9 (1978); *Missouri ex rel. Hurwitz v. North*, 271 U.S. 40, 41 (1926).

WHEREFORE, Respondents respectfully request that this Court deny Petitioner's Petition for Writ of Certiorari and enter an appropriate Order denying that Petition.

DATED at Burlington, Vermont, this 6th day of January, 1995.

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Attorney for the Respondents, Dr. Robert Hahn, Dr. Vincent Crockenberg, and Mr. Stanley Carpenter

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(3)

No.94-1034

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College,Johnson,Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

REPLY TO BRIEF IN OPPOSITION

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24pp

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20 USC 1232g, the Family Educational Rights and Privacy Act of 1974, aka the Buckley Amendment; 34 CFR 99, Buckley Regulations pgs 6,9,15

1 VSA 315-320: the Vermont Access to Public Documents Laws, 1975, pgs 13,20

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5100: Training and Certification of Teachers pgs 6, 12

Johnson State College Code of Conduct 1991-1992 pgs 5,6,17

Petitioner's Response Brief to Respondent's Brief in Opposition

Respondents pg 1:"...by teaching a Barre, Vermont history class under the supervision of a high school supervising teacher who, beyond serving as Petitioner's supervising high school teacher, has no affiliation with JSC."

Petitioner's Note: Dr. Wilgoren's status as "rogue" educator is noted in this Appendix, documentation pgs 15-21, as co-created documentation remains in his sole possession per college authority.

Respondents B:MISSTATEMENTS LAW/FACT

1.& 10: The arms length separation between attorneys and clients evaporates when Atty Carpenter,a respondent, passes total control to Paul Sutherland,the latter identified in court as the "4th Defendant" 10/19/93 (case file, Motion to Secure Documents), and in

light of 17 Jan 95 discoveries, this Appendix pgs 1-11 , as below:

Pgs 1-3, a 27 Apr 92 letter BY THE PETITIONER facsimile transferred from Carpenter's office to JSC BEFORE the PETITIONER mails this letter.Plaintiff's Vt. Supreme Court (exhibit) #8, request for JSC Department of Education appeal, was filed 20 Apr 92, with oral agreement to meet by 27 Apr 92 to resolve the issues .Vt Supreme Court (exhibit) #5, (pg) 3, indicates a closed door determination of the petitioner was conducted at the high school 27 Apr 92, by college AND high school supervisors.
Vt 4300 regulations (Appendix to Writ pgs 42-43) indicates that 27 Apr 92 is the LAST day of the SHORT TERM running suspension (7-27 Apr 92, less weekends and the intervening vacation week)of this teacher-student. (see #3, this brief).Clearly, Carpenter's 27 Apr 92 action affected the scholastic process, quashing internal procedures due and normal.

Pgs 4-5:a 5 May 92 facsimile transmission from Carpenter's office compared to Pgs 6-7: a 12 May 92 JSC letter from Dr. Towner, re: Graduate Committee process, is identical in wording save the last paragraph, excusing Dr. Tilley.

Pg 8: facsimile transmission, 06/02/1992 from Sutherland to JSC is IDENTICAL to:

Pg 11: The final decision of the Graduate Committee, RECEIVED by petitioner 3 June 92 (R/C/D 6/3/92) dated 2 June 92

Pg 9:"Post-it" notes over pg 8 indicate that neither committee members Black nor Whiting approved this decision PRIOR to notice to the petitioner,(arrival by USPS June 3 must be mailed June 2) and Chairman Towner, on vacation, is not even privy to this decision.The Graduate Committee is presented with a fait accompli by Sutherland, absent Towner input.

Thus Towner replies, pg 24, Appendix to Writ : answers F & H, as he does.The Graduate Committee Appeal step is completely controlled by Carpenter /Sutherland.

Respondents B:MISSTATEMENTS LAW/FACT

2: All documentation to the lower courts indicated that the "academic label" was contrived to promote "academic process".

3: Vt. 4300 regulations govern the suspension of students from class for disciplinary reasons,on short, long or emergency terms. Unless the college is now admitting that THE COLLEGE controlled the removal of the petitioner from the high school, with Wilgoren as agent provocateur and Principal Paterson as accomplice, the only administrative authority (the police were not called) that Principal Paterson has to remove a student-teacher is under the 4300 regulations,which necessitate "Goss v Lopez" minimums PLUS written notice, OR a full QUASI-JUDICIAL hearing,at the high school, after 27 Apr 92 (see #1 &10 above).Neither was afforded this teacher-student under the "academic level process", as below:

4:The Lamoille Superior Court description of the determinant "academic process" afforded this petitioner (Appendix to Writ pg 15 and

16) as well as the Vermont Supreme Court description (ibid, pgs 5, 7 & 8), are strikingly similar and parallel to the procedure found in the JSC Code of Conduct (Appendix this brief pgs 12,13 & 14, and before the lower courts in it's entirety)per POLICY ON ACADEMIC DISHONESTY,p27-28 (of the Code of Conduct).The first Code reference clearly notes that academic dishonesty is punishable under the COLLEGE CODE OF CONDUCT (published emphasis).The p27-28 referenced PROCEDURES are the procedures used to charge, adjudicate,sanction and provide appeal as regards the grading frauds.

While noting that the p27-28 procedures DO NOT allow EXPULSION as a sanction without filing a complaint with the Security Office (none was filed), the Court is drawn to the deconstructive language where the REPORT of fraud against a faculty member EQUATES with academic fraud itself.This subliminal "shoot the messenger" code is reinforced by the ex-post facto ruling of, surprise!!!,respondent

Sutherland, as documented (Appendix to Writ pg 25).

The ACTUAL JSCED charges (ibid pgs 18 & 19) are clearly allegations of code violations of both the Buckley Amendment and the Vt Dept.ofEd. 5100 regulations,creatures of public law.Respondents #4, Brief in Opposition, should read: The JSC Code of Conduct was INAPPROPRIATELY applied, by the college, to satisfy political, not academic, demands. 5:Petitioner's 1 Nov 93 "resubmission to the (Lamoille) Superior Court" pgs 32-49 (with separate evidence exhibits) clearly document that Drs. Tilley and Page ,as field supervisors, under Chairwoman Dr. Story, provided ALL 8 graduate students,petitioner included, and 8 undergraduate student-teachers LESS THAN 50% of the Vermont mandated field inspections;attached exhibit "10/19/93 Certification Fraud" indicates that 8 of these students were "certified" per the regulations by JSCED;that Dr. Page fails to complete the standard grading sheet for this teacher-student's "student teaching experience";that

this "clinical evaluation sheet" is signed 60+ days after expulsion from the licensing program,and that Principal Paterson's ALLEGATION of an ethics violation is, without attribution, the determining factor.In the Appendix to Writ (pg 23), Dr. Towner states that,disregarding an academic hearing official's request, "...Dr. Page preferred not to attend, and I had no power to compel her attendance." Dr. Page owes us all an explanation, else she remain derelict.Her 19 Mar 92 direct statement to the petitioner that he had failed his "internship" for "design flaws" is unrefuted before the courts.

6:Per the transcript of the 9 Apr 92 JSCED meeting, (Supplemental Brief and Appendix to Writ,material acquired 30 Dec 1994) Appendix pgs 32-35 clearly show that Tilley sent Lucas back to the high school to resolve an issue over the co-operative grading.Had Tilley approved of Wilgoren's "19 phantom assignments" prior to 9 Apr 92, the mystery of the "phantoms" would be an officially "closed issue" (ibid pg 53), Tilley having

"certified" Wilgoren's procedures, and thus Lucas would have taken no action, per Tilley's explanation.

7: Petitioner stands corrected;"black listing" was a conversation between Page and Lucas,10 Apr 92,via phone 06:30AM. I withdraw this from the pleadings, as I have never presented such to the courts.

8:Plaintiff's Lamoille Superior Court Exhibit 10/19/93 Grad. Comm(ittee) "Process" transcript of the Graduate Committee hearing,pgs 19-21, appellant officer Dr. Black states that he too is confused by the 9 Apr 92 "determination" thus ,stating finally: "...this letter did not state, in #1 what you did, in great detail...it does state what you did wrong" (pg 20-21), with this teacher-student requesting the "code book" that deciphers the "inferences" and "academic implications" (ibid).

9:Grad. Comm. "Process" (ibid): Towner statements (transcript) pgs 1, 13, 28-30, as well as the Towner summary (Appendix to Writ pg 22) indicate that Dr. Towner is not empow-

ered to see that "...every letter of the law is followed..."(transcript pg 30)

#11 & #13 : Re: Sutherland/Carpenter as "regent" appellant officers (see #1 & #10 this brief);JSC "Academic Dean Appeal Decision" fails to address, minimally, teacher-student's rebuttal (Lamoille Superior Court Exhibit :10/19/93 Academic Dean Mtgs, 9 Feb 92 ltr to Dean Crockenberg)of the JSCED Buckley Amendment "confidentiality requirement" promulgated as 9 Apr 92 charge #1 "academic failure". No less than four (4) legal reasons for a JSCED misread of the Buckley Amendment are not addressed.Page 20 of Writ indicates that Sutherland,as with the Graduate Committee "decision" (see #1 & #10), was aware and did not address the "federal" confidentiality issue, a JSCED fiction.Per #1 & #10 this brief, Carpenter's involvement with the appeal process preceedes 21 May 92, the date noted on the "Academic Dean Final Appeal" decision of 23 Mar 93.

#12: An attorney stating to a student that he considers the student's legal requests "harassment" (Appendix to Writ, pg 26-27) implies legal knowledge that the requests are invalid, and thus continuing to request documents is actionable in some legal manner by the college.

#14: Petitioner stands corrected.Respondent Carpenter is "corporate agent of record". Atty/Respondent Sutherland's Law Firm is, per Appendix this brief, pg 20, the legal representative of the college.

#15:Re: "academic sedition", see Supplementary Brief to Writ pgs 13 & 14 regarding "generic insubordination" and Respondent Hahn's "...unwillingness to accept the reasoned judgements...".(Appendix to Writ pg 32)Re: "state actors" and their behaviors; absent documented , signed Oaths per 16 VSA 12,(Vermont) Supreme Court (Exhibit) #3,Drs. Tilley, Story and Page are "state educational bureaucrats" without legal authority to legally grade.Assuming a performance con-

tract, Drs. Tilley, Story and Page are clearly in violation of 16VSA12 legal mandates.

#16: Per pgs 22-23, Appendix this Brief, the transcript of the 19 Oct 93 LaC hearing refutes this #16 objection.The transcript before the Court duly notes that Sutherland directly stated that this teacher student was academically "...failing his internship ..", a "fact" only AFTER this teacher-student filed WRITTEN grievances against academic fraud.Sutherland's statements, at the last moment, directed the LaC court to assume academic decision based solely on jurisdiction, not available fact. (see Appendix to Writ, pg 14).Thus JSC "process" meets "Horowitz" guidelines.

#17: The original 10/19/93 "Motion to Secure Documents of the 4th Defendant (Sutherland) is an open motion neither court has ruled on.The "Discovery Motion",to actually acquire these documents, was denied by the Vt. Supreme Court upon re-argument request

#18:Despite voluminous exhibits by the Plaintiff that JSCED was clearly outside published academic regulation and Vermont State Law (16VSA12 and VtDept-ofEd 5100, minimally), the LaC Superior Court stated, without reason, that academic performance was the reason for the dismissal.The highly unusual nature of the dismissal,the speed with which it occurred,the lack of normal documentation,all of these mitigate the court's unreasoned determination, when careful and delicate sifting of exhibits before the court would dictate that prior to WRITTEN grievance, no academic failure was apparent.

19:From the Supplementary Brief and Appendix, the extant record of the 9 Apr 92 JSCED "academic" meeting, it is abundantly clear that this teacher student raised substantive federal civil rights, constitutional guarantee as well as federal code statute violations as noted.(Tilley, Story and Page are SENIOR mentors of teachers;Story holds a Vermont Principal's license.) Unless counsel is stating that the teachers of teachers are

legitimately ignorant of the laws under which they must operate, the substantive reason behind the "ersatz" academic process is to wave off the apparent constitutional stresses, those "...career ending liabilities" Dr. Tilley spoke forcefully of. This petitioner sought relief under the Vermont Access to Public Documents statutes, and only when the Superior Court opened the door, via "Horowitz" and "Goss v Lopez", did the petitioner expand in defense.Before the Vermont Supreme Court, there can be no question that grievance, assembly, property, liberty, and free service absent apprenticeship status rights were amply present.Only when the Vermont Supreme Court fails to establish the contract between the students and the state was the 13th Amendment violation apparent, an action of the court, not this petitioner.That, from the beginning, the JSCED authorities did not recognize that this particular "internship" was no more than an uncompensated "graduate assistant

teaching experience" subject to latent 13th Amendment considerations is to admit that JSCED is totally inept and incompetent to follow it's own published regulations.

20: Petitioner stands corrected.

21: Respondents initially labeled, for the courts, the intricate oral/written grievance cum expulsion/suspension outcome as a generic "incident" (Lamoille Superior Court, ALL Motions for Summary Judgement,per case files).Which of the "many statements" made to the Vermont Supreme Court are they objecting to? In #19 above, some legal statements are addressed.Hopefully,we are not returning to the "incident" method of imprecise statements.As per below:

#22: "Process Summary-Facts v Deconstructions",is quite apparently an appendage appended to an appendix.This essay (unpublished) regarding the "morphing" of language, was adopted to the facts of this case to illustrate how those who control the labels control the process. If the Court wishes, Petitioner will edit this section

and "insert" the product into the Writ per respondents' complaint.Most likely, since this section touches mightily on the issue of just when and where academic crosses into political, and thus how and why "Horowitz" needs careful reading by the courts to be correctly used, the Respondents seek to banish this section on technical grounds.

RESPONDENTS C; GROUNDS FOR DENIAL

Clearly, the Respondents and their subordinates, having traditionally engaged in pre-"Keyeshian" 19th century educational practices by ignoring 16VSA12,prefer not to change. This teacher-student has drawn a clear outline demonstrating how genuine Academic Due Process is subverted by custom and collegiality,where student performance measures meet predestined outcomes.To conceal these unethical,immoral, and thus illegal behaviors, the respondents rush past "Keyeshian","Tinker v Des Moines", "Goss v Lopez" and the Buckley

Amendment, hanging the sign:Academic Procedure-Do Not Disturb,before the lower courts. Since the facts clearly indicate that the dismissal was not for academic/clinical deficiencies, only the talismantic reliance of the courts on the "educational authorities" self applied labels can explain the lower courts' decisions.Doubly disturbing is the clear involvement of "educational attorneys" in manipulating the "on-campus" processes in anticipation of a legal,court appeal.

Just as the Court once ruled that Quaker adolescents passively protesting, perhaps as surrogates, a distant,foreign entanglement, were of "importance to the public" in the process of educating the public,so too the Court should find that a quashed, "Tinker-like" protest of actions within the classroom is of public importance.With a heightened public discourse regarding public education, to the point of suggesting that most public education just doesn't work, on balance this appeal needs to be heard.

That the Vermont Courts erred in applying "Horowitz" attests to the seductive nature of the bifurcated due process "Horowitz" allows.Completely absent from either Courts' decision is a substantive determination that the "educational authorities" were within published, recognized academic disciplines before, during or after Petitioner's written grievances notices were published. A cornerstone of the academic prerogative granted under "Horowitz" (op cit at 92 [7], [8]) mandates such a determination, that "...no showing of arbitrariness or capriciousness..." has tainted the academic determinations. Yet clearly this brief demonstrates that the "academic level procedures" afforded this teacher-student are virtually synonymous and identically parallel to the "JSC Code of Conduct 1991-1992" academic level ACADEMIC DISHONESTY POLICY,which this appellant clearly pointed out to the lower Courts, to no avail.(Plaintiff's 1 Nov 93 Resubmission to the Superior Court, p51;Appendix to Writ, pg 72, 75, 84, 85,to the Vermont Supreme

Court).The Superior Court's determination that "...Johnson State College did not have any formal records setting forth substantive or procedural criteria providing due process to graduate students" (Appendix to Writ, pg 15) does not explain how the academic level, ACADEMIC DISHONESTY POLICY procedure, save the leeetle problem of defining dishonesty, was the procedure used in campus determinations which expelled this teacher student.

A determination by the "educational experts" that the grievance(s) were false, malicious, and/or libelous, could only proceed AFTER a substantive investigation(s) into the grievances had first occurred. The record clearly shows that none of the three (3) grievances filed on campus were other than IGNORED.Two INTERNAL high school investigations have yet to report.

Prior academic due process decisions never addressed the capacity of rogue "educators" to manipulate on-campus procedures in anticipation of a court challenge which nominally would fall under

"Horowitz" precedents, save Thurgood Marshall's dissent in "Horowitz" itself (op cit. 97-107). That the college provided ample appeal venues is no substitute for "...an expert evaluation of cumulative information..."(op cit 90), a surfeit,not surplus, in this case, denying a genuine academic label to the determinations.The day that Justice Marshal's partial dissent predicted, when administrators seek, inappropriately (op cit 106 [21]),an "academic" shield administratively constructed to conceal academic fraud, is today.

From the issue of grievance at the college, first legally raised in oral arguments before the Lamoille Superior Court,(Appendix this Brief,pg 24) through the presentations to the Vermont Supreme Court, this pro-se teacher-student has struggled with latent discovery of both the facts and the law.The college abounded with "educational experts" knowledgeable enough to recognize the dangers of their acts and avoid court intervention. They did not, and

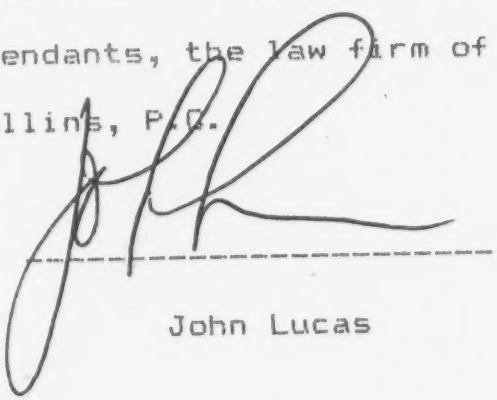
with the Vermont Court's talismantic reliances on these "expert's" "academic labels" through final determination, the latent constitutional issues brought to the Court are not moot, but the cumulative errors that a false "Horowitz" determination did, in fact, engender.

This petitioner seeks a review of "Horowitz" precedents upon which the Vermont Courts' determinations rest.Regardless of what route the U.S. Supreme Court chooses, striking "Horowitz" for a more finite ruling, or rejecting the Lower Courts' application of "Horowitz", the original action under the Vermont Access to Public Documents Laws will proceed at the Superior Court level, as the Respondents' Motion for Summary Judgement, resting totally on "Horowitz", will be voided. (Appendix this Brief, Decision of Judge Alan W. Cook,p 22).

In Morrisville, Vermont, February 3, 1995

P.S. John Lucas pro-se

I Hereby certify that on this date,the 3RD of February 1995,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures,four (4) copies of this Reply (Brief) to Respondents' Brief In Opposition, and Appendix to his Brief in Response to Opposition,plus an additional copy, five (5) in all, to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class Mail, United States Postal Service, Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing ad-dress of the Agent of Record of the Defendants, the law firm of Sutherland and Collins, P.C.



John Lucas

Supreme Court, U.S.
FILED
FEB 6 1995
OFFICE OF THE CLERK

(4)

No.94-1034

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se
Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College,Johnson,Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

APPENDIX TO:
REPLY TO BRIEF IN OPPOSITION

John Lucas, pro-se
RR#3 Box 3280
Morrisville,Vt.05661

(802) 888-2815

27RP

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April 27,1992

Donna and Michael Holden
95 Ayres Street
Barre, Vermont 05641
(802) 479-0659

Re:Follow-up to letter of April 6, 1992

Dear Mr. and Mrs. Holden,

Apparently in attempting to clear up some misunderstandings regarding Matt's U.S. History grade I kicked TWO 5000 ton gorillas in their big toes.From their reaction,you might have thought I'd kneed them in their groins.

In filing a proper grievance through channels at Spaulding High School over the History grades,I discovered that I had committed some sort of crime.I was almost immediately suspended from the high school as a student teacher, and less than 48 hours later I was ejected with EXTREME prejudice from the Johnson State College Department of Education.

Your son is not, I REPEAT, not responsible for any of these actions that occurred after the grievance was filed at Spaulding.In my opinion,your son is also a victim in these bizarre events.He,like I,is simply a student who deserves the best.

I have not quit.A week's vacation,some testing and counseling,plus the addition of an excellent attorney,Mr. David Putter of Montpelier, to the process will yield positive results.

First I must solve my problem at the College.That done,the initiating incident,the History Grading,will follow.

Some of the parents involved have offered to help defray the cost of the legal actions.I have agreed,but limited the total sum to one-half of the monthly retainer I must pay Mr. Putter, or $50.00 from all OUTSIDE contributors.This is completely voluntary,and I am not asking that parents contribute unless they feel it is the right thing to do.

Enclosed is a list of names and phone numbers of the parents whose students' grades are in question.Please form an informal group and have one or more of those interested act as a central collection point.Remember,unless a quick resolution can occur this week, the actions which will follow may take some time.

FROM VSC CHANCELLOR (MON) 04.27.'92 02:09 NO.177 PAGE 3

In the mean time,I have volunteered to tutor those students who have the time and interest in English Language Skills and U.S. History. The "Gettysburg Project", the history lesson that was so rudely interrupted,continues every Saturday from 10AM until 1PM in the Vermont Room of the Barre Central Public

Library,the Aldrich Memorial Library.These hours can be modified to better suit you student as the need arises.

Thomas Jefferson had an absolute faith in the wisdom of the common people to guide our Republic.In times such as these it is often hard for the common folks to see a way to effect positive,evolutionary solutions.

By next week I will be able to submit proof positive that the system does work,even if sometimes at a snail's pace.

Yours,

John Lucas
RR#3 Box 3280
Morrisville, Vermont 05661
(802) 888-2815
Work 253-8511 Leave messages

DRAFT

Copied from the file of the Academic Dean 11/7/95

May 6, 1992

Dear Mr. Lucas

I am in receipt of your letter of May 4, 1992, wherein you request that the Johnson State College Graduate Committee hear your appeal of the Johnson State College department of education's decision to remove you from your student teaching position at Spaulding High School.

The appeal process before the Graduate Committee is rather informal in nature and is as follows:

1) You may have counsel present (in an advisory role only)
2) You may submit a written statement to the comittee prior to, at or after the appeal meeting (This is not, however,required.)
3) The purpose of the meeting is to allow you to present information and evidence regarding why the decision of the Education Department should be overturned or modified.
4) Formal rules of evidence and procedure are not in place.
5) A representative of the JSC educa-tion department, who is familiar with the circumstances of your sit-uation, will be present.

6) Formal cross-examination is not permitted.
7) The proceedings are not recorded nor are they open to the public.

JOHNSON STATE COLLEGE
Johnson, Vermont 05656
Department of Writing and Literature
802/635-2356

12 May 1992

Mr. John Lucas
RR#3 Box 3280
Morrisville, Vermont 05661

Dear Mr. Lucas

I am writing to let you know of the process involved in your appeal before the Graduate Committee.

The appeal process is rather informal in nature and is as follows:

1) You may have counsel present (in an advisory role only) If you do choose to have counsel present, please let mr know so that we may do likewise.
2) You may submit a written statement to the comittee prior to, at or after the appeal meeting (This is not, however, required.)
3) The purpose of the meeting is to allow you to present information and evidence regarding why the decision of the Education Department should be overturned or modified.
4) Formal rules of evidence and procedure are not in place.
5) A representative of the JSC Educa-tion Department, who is familiar with the circumstances of your sit-uation will be present.

6) Formal cross-examination is not permitted.
7) The proceedings are not recorded nor are they open to the public.

I will be contacting you soon in order to set up a meeting time which is agreeable to all concerned. Professor Tilley, who is a member of the Graduate Committee, has been asked to withdraw from from this appeal, since he signed the letter terminating your student teaching practicum.we feel that his participation would constitute a conflict of interest; he has agreed to withdraw.

Sincerely

ss Daniel Towner
Daniel Towner, Chair
Graduate Committee

June 2, 1992

John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas,

Enclosed please find a copy of the Graduate Committee's recommendation to the President in connection with your appeal heard May 28, 1992.

In addition, I have today received your letter of May 30, 1992, which letter contains a request for another meeting with the Graduate Committee to further consider the action of the Education Department and to involve Dr. Page in the proceedings. I have shared your request with other members of the Graduate Committee, and it is our decision that the Committee recommendation to President Hahn would not be affected by further consideration or inquiry. Your request is therefore denied.

Sincerely

Professor Dan Downer
Chair, Graduate Committee

Copy left from the files of the Academic Dean 11/7/94 JH

498g.ltr
Enclosure
cc:
Robert Hahn, President
Vincent Crockenberg, Academic Dean
Carol Story, Chair, Education Department
James Black, Member, Graduate Committee

Total P.02

(Post-IT "stick-um'" notes over the Pg 8 Exhibit Faxsimile Document #98g.ltr"

Post-IT #1:
Alice and Jim:
This is the letter Paul Sutherland wrote in behalf of the Graduate Committee in re to John Lucas

Please review it and let me know if you have any problems with it.if not, I will type up an original and get it out in the mail to John.
Thank You!

OK via Jim B. 6/4/92
(read to him over the phone)
OK by Alice 6/3/92
ss: JoAnn Lamore

Post-It #2:
Ask Dan for copies of both letters to all members present + my material which he borrowed
(unattributable, not the hand in #1/#3)

Post-IT #3:Dan's 6/2/92 letter goes to John Lucas.P.S. Will send a letter that needs to be run by Alice and Jim Black-if OK,both letters letters can be mailed to John. If not, P.S. letter will have to be done over.

Copies to Jim & Alice
(in the same hand/script as Post-IT #1)

(Attached to Pages 8 & 9, 498g.ltr and three Post-IT notes)

SUTHERLAND & COLLINS, INC.
P.O.Box 1623
112 Lake Street
Burlington, Vermont 05402-1623
(802) 862-3524
FAX-(802)862-1794

****

FACSIMILE TRANSMITTAL

****

This transmission contains information which is CONFIDENTIAL-Please see notice below.

THIS IS A 7 PAGE TRANSMISSION, INCLUDING THIS COVER PAGE
DATE: June 2, 1992
TO: Joanne Lamore
FIRM/COMPANY: Johnson State College
FROM: Paul K. Sutherland, Esq.
FAX NUMBER: 635-2069
RE: John Lucas, as discussed
SPECIAL INSTRUCTIONS:

NOTE: The documents accompanying this fax transmission contain information from the law firm of Sutherlan & Collins,Inc., which is confidential and/or legally privileged.The information is intended only for the use of the individual or entity on this transmission sheet. If you are not the intended recipient, you are hereby notified that disclosure, copying, distribution or the taking of any action in reliance on the contents of this faxed information is strictly prohibited, and the documents should be returned to this firm immediately. In this regard, if you have received this fax in error, please notify us by telephone immediately so that we can arrange for the return of the original documents at no cost to you.

(Annoted on back: R/C/D
6/3/92
C
5/28/92
(ORIGINAL LETTER TO JOHN LUCAS)

JOHNSON STATE COLLEGE
Johnson, Vermont 05656
Office of the Academic Dean
802/635-2356

June 2, 1992

John Lucas
RR 3, Box 3280
Morrisville, VT 05661

Dear Mr. Lucas,

Enclosed please find a copy of the Graduate Committee's recommendation to the President in connection with your appeal heard May 28, 1992.

In addition, I have today received your letter of May 30, 1992, which letter contains a request for another meeting with the Graduate Committee to further consider the action of the Education Department and to involve Dr. Page in the proceedings. I have shared your request with other members of the Graduate Committee, and it is our decision that the Committee recommendation to President Hahn would not be affected by further consideration or inquiry. Your request is therefore denied.

Sincerely
ss:DANIEL TOWNER/jl
Professor Dan Towner
Chair, Graduate Committee

498g.ltr
Enclosure
cc:
Robert Hahn, President
Vincent Crockenberg, Academic Dean
Carol Story,Chair,Education Department
James Black, Member, Graduate Committee

Code of Conduct Johnson State College
Johnson, Vermont 1991-1992

p. 13...

ACADEMIC MATTERS...

ACADEMIC DISHONESTY

"Academic Dishonesty" is an act intended to deceive,cheat or defraud an instructor,academic officer of the college,a fellow student,or another in order to enhance or promote one's academic standing.Examples of such dishonesty include, but are not limited to, misrepresenting the work of another as one's own, using answers or information from another or from an unauthorized source for an examination or other academic assignment, and plagiarism....

The guiding principle for all academic work-themes,term papers,studio art,the results of experiments-is whatever is submitted as your own work is to be just that-your own work!Remember: Academic Dishonest is punishable under the COLLEGE CODE OF CONDUCT.

p27-28

POLICY ON ACADEMIC DISHONESTY

"Academic Dishonesty" is an act intended to deceive,cheat or defraud an instructor,academic officer of the college,a fellow student,or another in order to enhance or promote one's academic standing.Examples of such dishonesty include, but are not limited to, misrepresenting the work of another as one's own, using answers or information from another or from an unauthorized source for an examination or other academic assignment.Academic dishonesty in any form is prohibited and is unacceptable to this academic community.

PROCEDURE: Any faculty member who suspects that a student has committed an act of academic dishonesty should take care to document it. The faculty member should meet with the student and bring the suspicion to the attention of that student, providing him/her with an opportunity to respond. Following this meeting, should the faculty member determine that the student has committed an act of academic dishonesty, the faculty member may take one of two approaches. He/she may pursue the issue at the academic level or the judicial level.

If the faculty member chooses to pursue the case at the academic level, he/she will assign a sanction for the offense. This sanction may be a failing grade for the specific work submitted or a failing grade for the course. The student will be notified, in writing, of the faculty member's action.

The student may appeal the academic level sanction of the faculty member. Any such appeal must be submitted, in writing, to the Academic Status Committee. Upon receiving any such appeal, the Academic Status Committee shall meet with the student, the faculty member, and any other person with evidence to submit relative to the charge and determination and will thereafter affirm, reverse, or modify the finding and/or penalty of the faculty member. Decisions of the Academic Status Committee may be appealed, in writing, to the Academic Dean.

The faculty member may choose to pursue the case at the judicial level in addition to or in place of pursuing the case at the academic level. The faculty member may choose to pursue the case at the judicial level when he/she believes that the behavior merits sanctions above

and beyond what the faculty member can levy.

When pursuing the case at the judicial level, the faculty member must file an incident report with the Campus Security Office within one week after meeting with the student.

Decisions of the Dean of Academic Affairs and the Dean of Students may be appealed, in writing, to the President. The President, or a designee, will respond, in writing, to a student as quickly as is feasible.

CHAPTER V
CODE OF CONDUCT AND DISCIPLINARY PROCEDURES

p 43.
K. All forms of ACADEMIC DISHONESTY, including, but not limited to,
-Cheating
-Fabricating
-Facilitating academic dishonesty and plagiarism

12 Jan 95 (late annotation)

23 Jan 95 SECOND REQUEST (amended)

Dr. Robert Hahn Mailed Certified Mail
President Return Receipt Requested
Johnson State College
Receipt # P 829 801 676
Johnson, Vermont 06565
United States Postal Service

Re:Request for Documents under Vermont's Access to Public Records Laws

Dear Dr. Hahn:

Enclosed please find a FORMAL demand for INSPECTION and copy of public records. I am serving this request upon you because you are the President of Johnson State College.and thus the CHIEF CUSTODIAN of the records at Johnson State College.

As you know,the Vermont State Colleges Corporation is a state chartered PUBLIC corporation,created by statute to administer post secondary education through it's subsidiaries.Johnson State College is a subsidiary of this chartered corporation. Local, state and federal monies are disbursed to your corporation and it's subsidiaries in the nominal pursuit of educational activities. As such,your policies and procedures,as well as those of your subsidiaries,including but not limited to the documents listed below, are subject to inspection by members of the general public.

Additionally, the requested records fall under the federal rights granted students regarding their own educational

records, as detailed under 20 USC 1232 g, FERPA, and the FERPA federal regulations, 34 FRC 99 et al.

Since the College has apparently reversed it's previous positions regarding the status of Dr. Richard Wilgoren as an adjunct instructor of the College (see 28 June 92 Graduate Committee Memo and 23 (16?) Mar 93 "Academic Dean" Appeal Decision), this request for records asks you, as the President of Johnson State College, to secure these crucial documents from Dr. Wilgoren, now you subordinate per Page 1, Respondent's Brief in Opposition to Petitioner's Writ of Certiorari, Docket # 94-1034.

On or about 24 Feb 1992, Dr. Richard Wilgoren and the undersigned co-signed Spaulding High School Mid Marking Period Progress Reports, and sent them home to the parents of the 409B (419B?) American History Class.The procedure was for the parents to acknowledge these reports, and to countersign and return these reports.Please acquire true and genuine copies of these reports for me.

Page 1 of 3From the period 27 Mar 92 thr ough 2 April 92, a series of meetings between myself and Dr. Wilgoren took place, at which Report Card Grades for the American History students were co-ordinated.I provided Dr. Wilgoren the entire quarter's measurements. He supplied either 15 or 19 additional measures, deficient homework marks.From these sources, and perhaps others, the high school student published grades were co-created.Please 1) Secure a copy of the measures that I supplied Dr. Wilgoren, 2) Secure from Dr. Wilgoren the materials and written measures he used in the process, 3)Secure from

Spaulding High School true and accurate copies of the Report Cards of the 409B (419B?) American History Students for that, 3rd quarter grading, and 4) Secure from Spaulding High School the same report cards reflecting the previous grading period (s), ending 23 Jan 1992.

In as much as Dr. Wilgoren has achieved adjunct status, please provide all notes, documents and other papers generated by the other three co-ordinating teachers at the high school, also now, by extension, adjuncts of Johnson State College. Perhaps you can meet with Dr. Page and Dr. Whiting, which the records show met with "involved teachers" at Spaulding High School, on or about 27 Apr 92, at a meeting where my final grades in the EDU 680 Secondary Internship course was determined.These regular faculty members must be privy to the meeting, and can assist you in the search for any documents generated at this crucial point. As you must be aware, the Vermont Statutes regarding
student teachers do not allow grading of student teachers without written input of the co-operating teacher(s).

Finally, on page 9 of the above mentioned Brief to the United States Supreme Court, the Lower Courts are quoted as relying on "ethical standards" in their decision. This also occurs on Principal Paterson's 10 Apr 92 memo of suspension, as "...lack of ethical conduct displayed."
Please supply the "ethics code" to which both the Courts and Paterson refer to.

Second Request Amendments:

Records in my files at the college indicate that a facsimile transmission of 2 June 1992 from the offices of Sutherland and Collins is textually identical to the 2 June 92 Graduate Committee Decision/Recommendation of Dr. Towner, Dr. Black and Professor Whiting. This 2 June 92 Graduate Committee Decision arrived at my house, per notes on the back side of the document, on 3 June 1992, with a 28 May 92 Summary (unsigned) by Dr. Towner.

The yellow "post-it" notes on the front of the facsimile indicate that Dr. Black signed off on this document on 3 June 92, with Professor Whiting concurring on 4 June 92. Nowhere does Dr. Towner indicate that he has signed off on this document. The ORIGINAL in my files does not have Dr. Towner's signature as authority.

Page 2 of 3Please provide documentation which substantially indicates that Dr. Towner approved of this document, an appeal document issued in his name, with his authority as the appeal officer of the Graduate Committee. Also, indicate how Dr. Towner was authorized to seek the other member's approval, and speak for both Dr. Black and Professor Whiting, when neither of them quite apparently had knowledge of this 2 June 92 "Final Decision" until after it was mailed from the college.

Please be advised that Mr. Harris, before the Supreme Court, has firmly denied that Mr. Sutherland ever "posed" as Dr. Towner (Brief in Opposition 6 Jan 95: Page 5; #10)

IF YOU DO NOT PRODUCE THESE DOCUMENTS FOR INSPECTION,YOU MUST STATE YOUR REASONS FOR NON-COMPLIANCE WITHIN TWO

BUSINESS DAYS. YOU ARE NOTIFIED THAT 1 VSA SECTION 318 IMPOSES REQUIREMENTS OF TIME AND CONTENT RELATIVE TO THE ABOVE REQUESTS, AND THAT 1 VSA 320 IMPOSES PENALTIES FOR FAILURE TO COMPLY FULLY WITH THE REQUIREMENTS OF THIS VERMONT STATUTE.

On Monday, January 23, 1995, I state that I commenced service a copy of this request upon President Robert Hahn Johnson State College which is by virtue of the Vermont State Statutes (16 VSA 2171) a sub-division of the State of Vermont, mailing this request, Certified Mail, Return Receipt Requested, First Class Postage Pre-paid, United States Postal Service, to President Robert Hahn, Johnson State College, Johnson, Vermont 05656.
Dated:

John Lucas
RR#3 Box 3280
Morrisville, Vermont 05661
(802) 888-2815

On this date, the 23rd day of January, 1995, personally appeared John Lucas, signer and sealer of the foregoing written instrument and acknowledged same to his free hand and deed:

Before me:

SS: Linda Beaton

Commission Expires 2/97

cc:
Michael Harris
Files

Law Offices
Sutherland & Collins, Inc.
112 Lake Street, Ste. 5
Burlington, Vermont 05402-1623

Paul K. Sutherland Tele:(802) 862-3524
John J. Collins Fax:(802) 862-1794

Kathleen A. McMahon
Michael J. Harris

Paralegal:
Clara B. Griswold

January 13, 1995

John Lucas
RR3 Box 3280
Morrisville, Vt. 05661

Re: Your letter to Dr. Robert Hahn dated January 12, 1995

Dear Mr. Lucas:

Dr. Robert Hahn has referred your letter dated January 12, 1995 to him to me for response. Please be advised that this law firm will represent Dr. Robert Hahn and Johnson State College concerning any requests you might have for documents concerning that college.

To respond to your request: you appear to be seeking Spaulding High School mid-marking period progress reports;"measures" you supplied Dr. Wilgoren in Spring 1992;"materials and written measures" used by Dr. Wilgoren during that time;"report cards of the 409B" from Spaulding High School; certain "report cards" regarding earlier "report cards" regarding that course; "notes, documents and other papers" generated by three other coordinating Spaulding High School teachers; and "ethics codes" referenced by lower

courts and by Spaulding High School Principal Paterson in an earlier letter.

Please note that these documents do not exist in the Johnson State College files. See 1 VSA ss 318 (a) (4). We recommend that you address your request for such documents to the Spaulding High School records custodians, who can then respond to the extent such records may be subject to Vermont public records law.

Yours very truly,
ss: Paul K. Sutherland
Paul K. Sutherland, Esq.

js:vsc\110.ltr

STATE OF VERMONT
LAMOILLE COUNTY SUPERIOR COURT

JOHN LUCAS
V S-0077-93LaC
DR. ROBERT HAHN, ET AL

The above matter came on for a hearing on the defendant's motion for summary judgement before the Honorable Alan W. Cook, Presiding Judge, in the Lamoille Superior Court, Hyde Park, Vermont, on October 19, 1993

APPEARANCES
Plaintiff appeared pro se.
PAUL SUTHERLAND, ESQ., appeared for the defendant
COURT REPORTER: HEIDI T. WRIGHTON,RPR,CM

p23....
THE COURT:...Obviously, if the motion for summary judgement is granted, the case will be dismissed. If it is not granted or it's only partially granted, then the matter will be set for trial.

MR. SUTHERLAND: Your Honor,...
p25:... may I make one brief point?

THE COURT: Yes.

MR. SUTHERLAND: I'm not sure that I said clearly enough in my initial argument that there is the real distinction at Johnson State college, in academia as a whole, between matters involving academic decision-making and the matters involving disciplinary decision-making.And the reason, I think, that we were miscommunicating on what it is that Mr. Lucas was looking for is that this was an academic matter. This was an academic decision being made within the department that Mr. Lucas ought not to

be permitted to continue in his internship MUCH LIKE AN ACADEMIC DECISION THAT A STUDENT GETS AN A. B, C OR AN F. (Respondent's emphasis) And the process for appealing those decisions are very different than the process that's available for appealing disciplinary things to do with bad behavior, alcohol, assault, OR EVEN ACADEMIC DISHONESTY LIKE PLAGIARISM OR CHEATING OR SOMETHING LIKE THAT. (respondent's emphasis). And I think that all along while Mr. Lucas was looking for something from the college which described...

p25:...due process, he was thinking he had been disciplined and he was being punished.The college was thinking HE HAD BEEN SUBJECTED TO AN ACADEMIC DECISION THAT HE OUGHT NOT TO CONTINUE BECAUSE HE WAS FAILING IN HIS INTERNSHIP. (respondent's emphasis) I think that's a lot why we were miscommunicating.....

STATE OF VERMONT
LAMOILLE COUNTY SUPERIOR COURT

JOHN LUCAS
V S-0077-93LaC
DR. ROBERT HAHN, ET AL

The above matter came on for a hearing on the defendant's motion for summary judgement before the Honorable Alan W. Cook, Presiding Judge, in the Lamoille Superior Court, Hyde Park, Vermont, on October 19, 1993

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Plaintiff appeared pro se.
PAUL SUTHERLAND, ESQ., appeared for the defendant
COURT REPORTER: HEIDI T. WRIGHTON,RPR,CM

p 12...
LUCAS: Yes, you (your Honor) are right.I didn't understand.Counsel is quite right .I didn't understand how I could be suspended the day after I'm expelled for being suspended. That's a problem for me.What my attorney had requested and what we had requested informally of the department of education at Johnson State prior to moving to other methods was to find some way to resolve this so we could look at the incident. We were quite interested in seeing if my filing a grievance was actually a ...
pg 13...professional misconduct. That's all I did, was file a grievance. However, the grievance apparently has been lost because there is no more incident according to the high school.May I submit to the Court...
THE COURT:What is that?
LUCAS:These are requests for records fulfilled by the high school, Spaulding High School, through their attorney Anthony Lamb, on three separate occa-

sions last month on the 16th, the 21st and the 20th, actually, where they have given me all of the records pertaining and that they have threatened to arrest me if I ask for more records.There is nothing in this file which indicates an incident ever occurred, sir.There is nothing in this file from their attorney which at this point indicates that I was even a graduate student during the time period I was there.There is no letter of suspension.There are no nasty or demeaning letters written.There is no letter to parents.There's no...

(n.b. The Spaulding Records File(s) referred to are marked "10/19/93 S.H.S Records" before the courts.

IN MORRISVILLE, VERMONT, THIS, THE 3RD OF FEBRUARY, 1995.

PRO-SE -

Supreme Court, U.S.
FILED
JAN 19 1995
OFFICE OF THE CLERK

(5)

No.94-1034

In the
SUPREME COURT OF THE UNITED STATES
October Term 1994

John Lucas, pro-se

Petitioner

v

Dr. Robert Hahn DrEd President
Dr. Vincent Crockenberg PhD Academic Dean
Stanley Carpenter. Esq.,Board of Ed
Paul Sutherland, Esq., regent
All of Johnson State College, Johnson, Vermont

On Petition for Writ of Certiorari
To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

John Lucas, pro-se
RR#3 Box 3280
Morrisville, Vt. 05661
(802) 888-2815

31 PP

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PETITIONER'S EXTRAORDINARY SUPPLEMENTARY BRIEF IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI, DOCKET # 94-1034

PREAMBLE I

This extraordinary supplementary brief and appendix are the result of the receipt of an anonymous, apparently unauthorized record, an electronic tape recording, of a meeting that occurred on 9 Apr 92.

The petitioner-teacher-student, here-after teacher-student, recognizes that this electronic record is less than perfect.The version which arrived by mail, at his home address, on 30 Dec 1994, has been , for reasons unknown, reduced to approximately 41 minutes. The recorded meeting, according to the

teacher-student's notes, lasted just over 70 minutes.

Until someone comes forward to explain this discrepancy, what is not on the tape is speculative.

However, what exists on this tape is not speculative, and is entirely consistent with the on-the-record accounts of the meeting, made by this teacher-student, before academic authorities, civil authorities and subsequently to the courts in Vermont.(Lamoille County Case File Exhibit: (Plaintiff's) Appendix XII, pg 56 #9 "...facts not in your possession...") are on the tape in several places, as are other events described in the case files.

PREAMBLE II

This extraordinary brief to the Court is the petitioner's explanation of the transcript of the taped material which

appears in the attached appendix.The conversations did not occur in a vacuum, but in context with the events which preceded and then immediately occurred after this meeting.

Two (2) days prior to this meeting, the teacher-student was removed from his field placement at Spaulding High School.No notice, oral or written, accompanied this action.The teacher-student, per the advice of Dr. Page, his College field supervisor, advice given the evening before the dismissal, left the high school with all incident, other than to ask for both oral and written reason for the removal,having been promised written notice, by high school supervisor Lussier, as a condition to obeying the principal's alleged "suspension" as activated by Lussier's statements.

Dr. Tilley is the personal academic advisor to teacher-student Lucas; Dr. Page is the assigned College supervisor for the "field experience".Dr. Carol Story is the Department Chair(woman) of the JSC Department of Education.Mr. Joe Maiola is the Chairman of the Spaulding High School Social Studies Department; Dr. Richard Wilgoren is the history teacher/placement supervisor (of Lucas) in whose class the "unusual grades" surfaced.Kay Patterson is the Principal of Spaulding High School; in 1988, she succeeded Wilgoren as the Principal for reasons unknown.Wilgoren was re-assigned to Maiola's Department.Lussier is, at this point, an untenured subordinate to both Wilgoren and Maiola, as well as the high school's senior supervisor of Lucas' "field experience", a co-ordinator of the four supervisors the high school provided this teacher student.

EXTRAORDINARY BRIEF

Referenced to transcript in attached Appendix to this Brief:

Page 3: The "8 Page Handwritten Report" is the teacher-student's report of activities at the placement site and the College from 27 Mar through 9 April 1992.This report was written in the early AM hours of 9 April 92, subsequent to Dr. Page's notice of the meeting received by phone at approximately 8:00 PM on 8 Apr 92.This "8 Page Report" will subsequently be reduced, after the meeting, to six (6) pages, with the "missing" pages 1 and 2 "restored" by 3 Sept 92 (Lamoille Superior Court: (Plaintiff's) Exhibit :Academic Prerogative, pg 32)

Page 4: The teacher-student testifies to the college officials that, having been denied access to avenues to pursue his

grievance, the cover-up phase of the "grading incident" has substantially begun.Relative to the records before the courts (Lamoille Superior Court: (Plaintiff's) Exhibit: All SHS (Spaulding High School) Records), which contains records compiled AFTER Sept 1993 , and the failure of high school investigations to issue any report regarding the "grading incident" (see below), the teacher-student's characterization of "cover-up" is historically correct.

Page 6: Dr. Page's query as to the right to assignment of grades begs Wilgoren's absence from the classroom for the entire marking period (see below).By default, the teacher-student assumes that professional grading must be based on substantive observation and marking of the students within the third quarter, and that as the "student" has conducted all of the grading for the

quarter, no other data exists to modify these measures.

Page 7: The "procedure manual" referred to is the SHS Curriculum Guide, a copy of which was given to the teacher-student at the beginning of the "field experience". JSCED Professor Tilley is, at this point, handed the only copy of the Curriculum Guide.The Curriculum Guide will be returned to SHS over the teacher-student's objections (Appendix XII, pg 54, reference Dean Whiting's 8 June 92 memo).

page 8: "...the only written document..." refers to the SHS Curriculum Guide.

Page 8 & 9: Reference to marking the "8 Page Handwritten Reports": NO : in regard to the note on page 3 of the "8 page report" asking if this very meeting is being recorded by Johnson State College, as the reports are marked (Vermont Supreme Court Exhibit #4, Page 3).

Page 22 & 23: "...facts not in your possession..."; per Preamble I, and as below, this obvious student deficit (facts you are ignorant of) is not remediated by Dr. Tilley, who clearly has these "damning facts" but is "...not in any position..." to disclose these "facts".These "facts" are before the Vermont Courts (Appendix XII,pg 50,pg 51 #6, pg 56 #9), and are still sought currently.Absent production of these "facts", the teacher-student is held deficient for information not in anybody's possession.

Page 26: Dr. Page's surprise at Wilgoren's request to write a written evaluation of her student-teacher contrasts with Respondent Crockenberg's assertion (Appendix to Writ of Certiorari, page 30, paragraph 1) that no written observations from high school supervisors exists.Certainly if the ex-principal of the high school had a

legitimate counter-grievance to file, he surely would have done so, having sought a form from his "student-teacher" prior to the "suspension" and "expulsion".

Page 27:Dr. Page admits that she was absent for the "grading incident" period.Dr. Story then condemns the student for his failure to seek her out in Page's absence, although almost in the same breath, Dr. Story states that she and Dr. Tilley were in contact, apparently not concerned that Dr. Page is uninformed.What information Dr. Story and Dr. Tilley shared, leading to Dr. Story's knowledge of "...what was going on..." is unknown, except for the fact that the teacher-student was, without supervision, attempting to file a grievance at the high school.

Page 28: Dr. Tilley's statement that the "school" had no indication, or warning, that the oral grievance had been in process for 10 calendar days, coincides

with Principal Paterson's ex-post facto "memo of suspension" dated the day after this hearing (Appendix to Writ, page 20).That Lussier has "gun-decked" the grievance is apparent (see below).The Principal's knowledge of the "incident" is entirely one-sided (op cit).The difficulty of pressing the complaint through the "Spaulding system" is detailed.

Page 29 &30:Lussier's inaction is detailed, as well as Page's ignorance that once published, the report card grades resultant of fabrications are the co-responsibility of the "apprentice" and the "Master Teacher", ex-principal Wilgoren.Claiming fraud in the process, the teacher-student files written protest notices the first school day post publication of the report cards, 6 Apr 92, with generic "mistake letters" to only the parents of the affected students.

Page 30: Notice that the teacher-student spoke to Dr. Tilley in lieu of Dr. Page on 30 Mar 92, 1 week prior to written complaint, as well as Lussier

Page 32: Dr.Page clearly admits to being absent, thus ignorant of the events surrounding the "grading incident".Dr. Tilley's account of his prescriptions for student-teacher action are disputed by the student-teacher.The teacher-student's claim that he has evidence of the grading fraud is completely ignored.

Page 35: The teacher-student clearly states that since no policies have been made known to him, no policy violation has occurred. Dr. Tilley sweeps this away with "universal-generic" process so well known as to preclude publication and oral notice.

Page 36:What is clearly not at issue, according to Dr. Tilley, is the teacher-student's clinical performance in the classroom.

Page 37: Again, the teacher-student states that he knows where the "19 phantom assignments" of Wilgoren came from Tilley's response blurs the fine line between license and licentiousness with a thick screen of authority granted by the Vermont License(s) held by Wilgoren. No such authority exists. Dr. Story's "...not necessarily..." reply is a direct statement that the education practice of changing the parameters of measure after the fact is "...his (Wilgoren's) discretion...".This equates with cancelling a grade arbitrarily after the fact, and is not standard educational practice.

Page 38: Dr. Tilley concurs with Dr. Story on the "secret experiment" with the "phantom assignments" and the impossible dilemma the teacher-student faces.Dr. Page's assertion that written communication between teachers and the parents of the teacher's charges is not

allowed without screening by some administrative authority denies one of the basic academic freedoms of teachers: the right to fairly, accurately and freely communicate to those directly concerned. No such official policy exists at Spaulding High (Lamoille Superior Court:(Plaintiff's) Exhibit: Academic Prerogative pg 23:Personal and Academic Freedom (of Barre NEA teachers) and pgs 18-22:Grievance Procedures (for Barre NEA teachers).

Page 41:Having admitted that he have had made an error in judgement, Dr. Tilley finally charges the teacher-student with "generic" insubordination, stating essentially that all adverse information regarding educational activities must remain inside the educational institution until all educators have had a chance to confer.Since Tilley refuses to identify to whom or to what the teacher-student is insubordinate, the charge is

synonymous with sedition to authority. (See Appendix to Writ pg 32: "...unwillingness to accept reasoned judgements of others in positions of authority.)

Page 42: "...the letta (per Dr. Page's Boston accent)..." went to the affected parents outside the school.That the parent's already knew,orally from their children, that the grades were "unusual", would, per Page's reasoning, subject the history students to discipline for stating that the "grading process" was "irregular".

Page 43: The teacher-student states specifically that his report circulated for at least a week before being reduced to written, formal complaint to College and High School supervisors.Dr. Page is unaware that Principal Paterson's knowledge of events comes from Supervisors Lussier and Wilgoren:the internal 10 April 92 "memo of

suspension" is addressed to Dr. Tilley, not Dr. Page, and is not even extant at this time.Wilgoren is the subject of the teacher-student's complaints.Lussier has held the oral grievances in his sole possession from their inception.

Page 43: "...going public..." is a serious pre-occupation with Dr. Tilley, who somehow equates Vermont Public Education with national security (see below)

Page 44:Dr. Tilley's assertion that grading is a "private matter" of licensed personnel is not born out by educational precedent, educational ethics codes or moral standards, nor by legal ruling.Tilley's statement that the organizational grading policies are actual individual policies is bunk. However, without such "authorities", the actions which the JSCED professors are to take immediately following this meeting are outside authority.

Teacher-student Lucas questions the use of measures of academic ability taken outside the grading period in question.It is apparent to Lucas that the "19 assignment" deficits do no occur in the 3rd quarter because Lucas has taught then entire period. These "phantoms" must be past measure, recycled in lieu of actual observances. Fixing student performance at any level based on "historic record" is abusive neglect of academic standards.

Page 45: "...the policy handbook here..." refers to the JSC Department of Education Student Teaching Handbook (Lamoille Superior Court: (Plaintiff's) Exhibit:JSCED Student Teaching Handbook 1991-92).This reference to the JSC "quasi-" Buckley Amendment forms the "...in part.." charge of "Violation of Confidentiality" (Appendix to Writ pg 18).This Pg 43 "interpretation" of the JSCED Student Teaching Handbook confers

absolute FEDERAL authority on the classroom teacher in the conduct of classroom activities.The total policy. as distinct from the "...in part..." policy, clearly states that the educational records of the students belongs primarily to the students and the parents of the students (Appendix to Writ pg 48-49).That some other "secret" "organizational code" operates at Spaulding High School is for the teacher-student to intuit, and then obey. The case file clearly demonstrates that once the Vermont Attorney General discovers this "organizational code", he brands this "code" illegal (Vermont Supreme Court: (Plaintiff's) Exhibit: #8). Page 46: The teacher-student's claim that he had exhausted oral process before filing written grievances is rebutted by Dr. Page's claim that not enough time had passed before the oral stage moved to written.Since Page was

absent from either campus, and thus could not have indicated what time period was sufficient to exhaust oral complaint, her statement here is self-serving.

Page 50, 51: The JSC authorities are totally lost when the teacher-student refers to his "8 Page Report", a report given to Tilley, Story and Page at the beginning of this meeting.The JSC professors have not read this report, and are at a loss to identify the report.

Page 51: Lucas clearly states "...where are they (the 19 phantom assignments)...?"The College is duty bound to discover them, for the "19 Assignments" have placed the teacher-student in this very meeting, and at great jeopardy.

Page 52 & 53: Dr. Tilley has, with some delight, discovered the unique "double bind" that the "19 phantom assignments" pose Tilley's graduate student.If Lucas

does not report the fraud, Tilley can ask about the outcome of Lucas' complaints.When Lucas says that nothing was done (assuming that no letters were ever written over the 19 assignments), Tilley can charge the student with failure to report.

Page 53:Finally, Tilley and Story acknowledge that the "19 assignments" will never be seen by anybody other than Lucas and Wilgoren.Tilley states that he (Wilgoren) may have substitute grades for an entire quarter during which Wilgoren was absent as the classroom teacher as well as absent while charged with supervision of a student-teacher who actually did the teaching.Clearly, Tilley and Story have substantial knowledge about the "19 assignments". Clearly, they are relying on secrecy to conceal their knowledge. As Tilley states:" Nobody else will (see the alleged deficiencies)!!!!"

Page 54:Dr. Story's ignorance of time and date correlations regarding the teacher-student's teaching of the entire marking period in question belies her earlier statement that she "...knew all about..." the facts of the matter.

Page 55: None the less, the teacher-student has no responsibility to the academic process to ensure accuracy and fairness in grading. In effect, a veiled charge of being "too responsible" or "over-responsible" is laid.The JSCED decision to expel the student from the program echoes this very sentiment (Appendix to Writ pg 18). The printed non-sequiturs (alleging that responsibility is a failure) are little more than the Freudian slips and projectional transferences of Tilley, Story and Page rushing to expel the teacher-student before anyone "outside" education begins to question the process.

Page 57: Again, alleging poor fact finding, Dr. Tilley goes on to characterize the "unauthorized" notices to the parents as "public information", and follows up with a charge that the teacher-student has contacted the 4th Estate regarding the controversy. That is emphatically denied.What a student-teacher would "normally know" is conjecture. That Lucas, and some of the history students subjected to the "19 assignments" appeared in a color photograph in the Barre Times Argus on 7 April 92, is fact. Any connection between this published photograph is a projectional fear that Lucas might take his issues to the press if no action is forthcoming. The photograph was taken on 3 Apr 92, three days before the oral grievance was converted to writing. Dr. Wilgoren receives positive attribution in the caption below the picture. The teacher-student does not control the use

of photographs by the Barre Times Argus.In fact, the photograph was published and on the presses before the teacher-student was told by Lussier to leave the building.

Page 59: Once more, the JSCED professors demonstrate that the teacher-student's "8 Page Report" is irrelevant to this hearing. They refuse to sign these documents as mere witnesses, and even begin to pass all of the reports back to the student.Dr. Tilley determines that at least one copy would be useful. Three complete copies are left in the room.

Page 60: Clearly, only the written complaints and notices to the parents finally prompt an "internal investigation" at Spaulding. Dr. Page knows something about an internal investigation, and on...

Page 60 & 61:...so does Dr. Tilley, who, having asked the principal (Paterson), is assured that they (the high school)

looking into the discrepancy, and states so.Whether this investigation continues into the next week, when evidence before the Vermont Supreme Court (Vermont Supreme Court: (Plaintiff's) Exhibit #5, pages 2 and 3) clearly shows that School Psychologist (nee home-school co-ordinator) Dennis Downs begins his investigation, or if Page and Tilley are aware of an independent (of Downs) investigation is unclear. No reports of any investigation have surfaced to date. Per Petitioner's Writ, Respondent Sutherland denied orally before the Vermont Supreme Court that any investigation had taken place. Page 61:The teacher-student is hopeful that the "internal investigation" will explain the "19 assignments".In less than 30 minutes from this point in time, the student will be expelled without recourse to appeal, other than the

"ersatz academic due process" now before the United States Supreme Court.

SUMMARY

As recorded, this meeting is no more than the quintessential "Star Chamber Interrogation" required to affirm secretly drawn "Bills of Attainder" and provide basis for the ex-post facto charges and decisions, decisions extant on the post-meeting 9 Apr 92 JSCED expulsion letter
(Plaintiffs Appendix XII pgs 13-14 through Appendix to Writ of Certiorari, pg 18-19).
Clearly, on 9 Apr 92, only the teacher-student has any factual information regarding the "19 assignments" and the process of reporting and protesting their usage to create report card grades.Just as clearly, Drs. Tilley, Story and Page have no information to counter the teacher-student's perceptions.

Clearly it is ironic that the teacher-student, protesting the use of non-extant evidences to create high school published grades, is being subjected, in this meeting, not only to a measure based on the "phantom assignments", but to additional sanctions based on "known procedures", "facts not in his possession" and "confidentiality requirements" no more real than the "19 assignments".

Clearly, this "reasoned authority" is based on a need to expel the complaining student, not to discover if there is any truth to the student's grievances prior to terminal action.

Clearly, secrecy, hidden requirements, unspoken internal codes, suppression of evidences and bureaucratic need have replaced reason, sanity and the search for the truth.

Clearly, the teacher-student was abandoned in the field by Tilley, Story and Page, and thus expendable.

Clearly, the issues of Constitutional protections of students in the classroom have been brushed aside.

Clearly, no notice of suspension has, by meeting time, reached the affected teacher-student.

Clearly, the statements in this meeting explain why procedures to keep this meeting "off the record" had to be constructed "ad hoc".

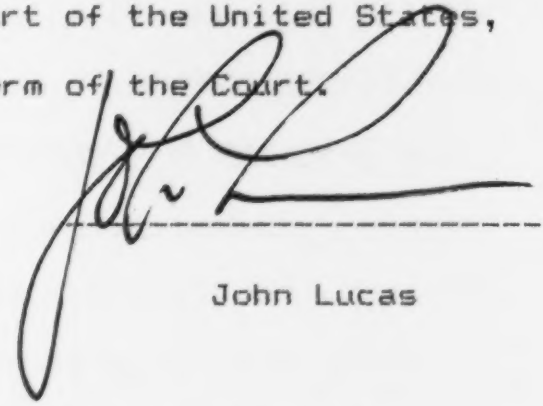
Clearly, this is the record of a meeting which re-established, behind closed doors, the absolute 19th century prerogative of teachers to mark based not on evidences or observation, but on the "belief" that students have succeeded or failed as subordinates to the authority at the front of the room.

Clearly, the authority granted under "Horowitz" does not extend this antiquated academic prerogative to scholars at the end of the 20th century. Clearly, this record substantively and clearly demonstrates that the scholastic authorities and the government have made great errors.

Clearly, academic does not equate to the process extant on this record.

Clearly, it is time to forever open the doors on scholastic process, least this abuse of power continue to suborn future teachers, and by association, their future students, and ultimately, the Republic..

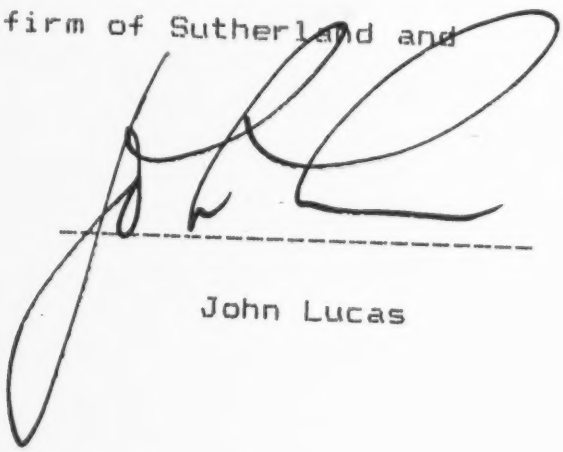
Signed this day, the 18TH of January,, 1995, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.



John Lucas

I Hereby certify that on this date, the 19TH of January, 1995,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures,four (4) copies of this Supplementary Brief and Appendix to his Writ of Certiorari,plus an additional copy, five (5) in all, to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class

Mail, United States Postal Service, Postage Pre-paid, to 112 Lake Street, P.O.Box 1623, Burlington, Vermont, 05402-1623, the official mailing ad-dress of the Agent of Record of the Defen-dants, the law firm of Sutherland and Collins, P.C.



John Lucas

Supreme Court, U.S.
FILED
JAN 19 1995
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(6)

No.94-1034

In the
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John Lucas, pro-se
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v

Dr. Robert Hahn DrEd President
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Stanley Carpenter. Esq.,Board of Ed
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All of Johnson State College, Johnson, Vermont

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To The Vermont Supreme Court:Docket #94-015
Motion to Reargue Denied Aug 23, 1994

APPENDIX TO JANUARY 1995 SUPPLEMENTAL BRIEF TO WRIT OF CERTIORARI

John Lucas, pro-se
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6pp

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(The following is a transcription of an electronic record, a tape recording, of the 9 Apr 92 meeting which took place in the office of Dr. Herb Tilley, at the Department of Education Building, the McClellan Building, of Johnson State College,(JSC), Johnson, Vermont. Present were Dr. Tilley, Dr. Carol Story, then Department Chairwoman, Dr. (ab) Marilyn Page, and teacher-student John Lucas. Subsequent this meeting, a letter dated 9 Apr 92 (mailed, arriving 10 Apr 92) will inform Lucas that he has been summarily removed from the Master's of Education Secondary (high school) Vermont State Licensing Program, administered by the JSC Department of Education, allegedly for violating Federal Laws governing student records and internal rules of the host high School, Spaulding High School, as well

as the rules (legal regulations) of the state licensing program itself.

(There are at least three (3) large gaps in the approximately 41 minute record, indicating that material is missing. This transcription is being done by attendee Lucas, who recalls that the meeting itself lasted just over an hour. Those areas where the large "skips" occur on the tape are clearly marked.

(This transcription is the best true record that this transcriptionistcan provide, and should not vary at all from other records of the same material.True and accurate as is possible, as always.
John Lucas pro-se
ls)

Dr. Tilley:Well, we've gotten to the place where it seems like it's appropriate that we get a chance to meet and...

Lucas: Oh, sure...

Tilley: ...talk things through and to... to ...hear what, what ah.. you perceive John as problems and issues and your ...

Lucas: unhuh...

Tilley:...perceptions of what..

Lucas: I brought a series of papers here which I will sign and I would like you to witness ...as well, you can each keep a copy for yourself...sign each copy and return the yellow original to me...I apologize for not being able to type it, but things being as short as they were ...(to Dr. Story) ...Storey or Story???

Story:...just "y"

Lucas:I just want all of the co-operating teachers from Spaulding to give class 1 recommendations for the work that I did there...

Tilley: That they have, or that you're expecting them to...???

Lucas:No, no, this is. this is, this is minimum outcome that I will expect from them, if they get into talking about what we are going to do here...I want this without prejudice on both sides...they want no prejudice on their side, I want no prejudice on mine as well...

Story:Please...I wish you could say (to me) what this (submitted 8 page report is)...?

Lucas: O.K. My perception of what's going to happen here is they have a whole series of liabilities on their own side that they are probably going to want to cover-up. I think that we are probably looking at separating my

teaching experience with Spaulding High School,and should plan that that is probably the path of action that will most likely occur with the least damage to the most amount of people...ahm..I have been unable to hire a lawyer, in fact I'll be running around all afternoon , this afternoon trying to do that...in the interim, acting as my own best counsel, which may be foolish or not..this is what I would expect to get for them in exchange for a series of...ah.. concessions on my part ...they are not what I would be...consider to be in a terribly great position in some instances ...and ah, while we see that this is a crisis, it's both a crisis of danger and a crisis of opportunity ...so...I mean you and I have looked at this as what's the damage to me, what's the damage to the college, what's the damage to them, they're over there on the other side doing exactly the same

thing...what's the damage to us, etc, etc. etc...

Dr Page: So this is something you're demanding from them????

Lucas:I haven't even talked to them yet. I'm assuming that ...the...will come up some time in the conversation ...and I want you to know what my minimum requirements are ...

Page:... of them (the high school)???

Lucas:...of them! Right!!!

Page:...in order to...???

Lucas: Separate this without prejudice on both sides...

Tilley:uuuuuuuhhhhh (long groan)

Page:And what you want..to do..is to assign the grades...is that right-???

Lucas: That's correct...

Tilley:...Have you read our student teacher handbook...?????

Lucas: Un-huh (affirmative)

Tilley:That you have (indecipherable)...

Lucas: I (indecipherable)....

Tilley: (indecipherable question)

Lucas: That I am supposed to behave in a professional way and do my job as best I know how...

Tilley: That's what it says...at the same time that you abide by the policies and procedures of the school in which you're teaching...

Lucas: Oh sure...

Tilley: Do you feel you've done that??

Lucas:Yes I do!!...ah, I can give you the procedure manual that I got, Herb, from (unintelligible lost section) ...that's the only procedure manual that I got from that school...

Tilley: Did you talk to the Department Head (at the high school???)?

Lucas: No, I never got a chance to do that...

Tilley:Did you talk to the principal???

Lucas: No, I never got a chance to do that either...I was thrown out...I (was) refused that meeting...I (had it)on the

schedule...scheduled...I was told I couldn't go to it, so...I did ask about procedure, and my concern as to the mistakes and errors was that I did not want to be considered accessory to and after the fact...that's..

Telephone rings:

Lucas:...the procedure manual that was given to me...

Telephone rings:

Lucas:...that's the only written document that was given to me at that school...made available to me...

Telephone rings:

Lucas: that anybody...

Tilley (answers phone): yeah...

Lucas: ...gave me any guidance on...and...

Story:...what is this about (this meeting) being electronically recorded????....(interrupted by Tilley on phone, dual indistinguishable conversations)...

Lucas:I...I didn't know if anybody had a tape recorder here or not...if you're going to have one, fine, I just wanted to be able to mark if a copy was going to be available...so I'm going to mark that no...

Story: (too soft to transcribe)

Tiley: O.K....ah...ten (this is to the person on the other end of the phone conversation)...O.K.....yeah...yep...bye! (hangs up the phone)

Story:Ah, John, it's always been clear to you that it was stated clearly...

THIS IS THE FIRST CLEAR DISRUPTION OF THE RECORDED MATERIAL THE RESPONSE IS INCOMPLETE AND DISJOINTED...

Lucas: I understand..

Story: Any decision that's made regarding the students... (static)...

Lucas:...I understand that too,ma'am...

Story:...that it's clear to me...

Lucas:Yes,...I understand that too...and until what I perceive to be a criminal activity occurs, and at that point I have to answer to what I consider to be a different set of ethics and moral...

Story:Until the criminal activity occurs?What...(static)...activity..

Lucas: What Happened???

Story: (too soft to transcribe)

Lucas: What happened in there was that..aaah...the due process of a fair procedure was denied at least half of the students in that class regardless whether there are 19 pieces of homework assignments missing or not.Let me show you the...the addendum on the letter to Dr. Wilgoren, which I gave to him last Monday (6 Apr 92),....about the grades...you will notice that there are only nine students on that graded list..

Story: yes...

Lucas:...of which there are any questions. That leaves five students unaccounted for...

Story:un-huh (affirmation)..

Lucas:...Those five students were not, in fact, graded against the 19 missing homework assignments, their grades were satisfactorily low,so that we didn't have to adjust them at all...and that was perfectly clear to me at the point that that happened...that he was hunting for grades to adjust, only the higher grades in matter of fact, the two "D" grades there that are off by a minor fraction of a point, they (the "D" grades) were not adjusted by these phantom homework assignments.

Lucas: If in fact the homework assignments do not exist, then we have a whole series...ah...of violations of all other sorts of codes, including the 6th Amendment of the United States

Constitution, the 6th Amendment of the Vermont Constitution, the 14th Amendment of the United States Constitution, and various and sundry civil rights laws including but not limited to the 1983 Civil Rights Act.

Tilley: I think you're making some ...some...hugh leaps in terms of you assuming that you have all the facts...

Lucas:Well, I have not seen the homework assignments...they were never given out..I was in class all but nine days of the 45 day period, Herb, I saw this man give out four (assignments),I saw him pass (on assigning homework) one day, I saw him observe me on two days, and I had him give out my homework assignments on the other two days.

Tilley: Were you totally familiar of the grading policies???

Lucas:No.In fact he (Wilgoren) left the grading policy open, although I do have a copy of how he graded last

semester,which he did not say was specifically the way I was supposed to grade, or supposed to hand out work, or whatever...it's a fairly interesting (grading) scheme...

Tilley: In any event...we're still only people working within that school...

Lucas: I understand...

Tilley:... Not having any ultimate rights to grade the final grades unless the teacher specifically states that...

Lucas:But he never specifically stated that he was going to give the final grade...

Tilley:Then it's implied that he would...

Lucas:Well, it wasn't implied to me...it was not clear, in fact it was incredibly unclear...since he had no...no... syllabus,no lesson plans, no guideline on even here's the book, here'a the students, here's...

Tilley: That you saw...???

Lucas:..that..YEAH..that if he didn't present it to me, then how am I supposed to...???...he did not say...we did have a conversation on day five (of the internship) where I said,:you know,I'm probably not your style...and he says: no, you're not my style, and I'm not your style, and I don't expect you to be me, and I don't expect me to be you ...and we never had a disagreement with this man until the grading came up.At that point, all of a sudden, everything that was fine began to unravel quickly...

Story: (too soft to transcribe)...

Telephone rings again. Tilley answers, covering most of Story's question or statement that begins:

Story:... situations...So at this time...

(Tilley on the phone: Hi, how are ya...)

Story:...that was not a...

Lucas: I'm not trying to say..about the crime, ma'am.What I'm trying to do is cut my liabilities.That's exactly what that paper that I (just) gave you (8 page report) says.I'm concerned with being accessory to or after the fact atop this mystery (the phantom 19 assignments)..I talked with ...ah..Mr. (Dick) Lussier (high school supervisor) about approaching this to somebody...and he said: let me find out...and he was incredibly vague, and he didn't know where to go, and there was no manual...no procedure...I talked to Herb (Tilley), and Herb said:If you think you're there, be careful, watch what you do...but don't get yourself in trouble...ah..I spoke to Dr. Wilgoren twice, very nicely trying to say that...we're ...very much amazed by what this is, and what that is, and what the other thing is. and how these (phantom assignments) came about...and at the

second time (conversation) the number of "missing" assignments goes from 15 to 19, he's going to come back and say that I took 19 of his homework assignments that he assigned me under a syllabus and threw them in a shitcan somewhere ...that's his defense...that's NOT TRUE.And I will not...stand by for that...Secondly,if in fact that I'm concerned that I am accessory to the fact, and I can't get anything done, and nobody wants to listen, THEN I WANT OUT.

Lucas (to Story): Do you know what accessory to the fact is???

Story:Yes, I do (softly, not to be confused with Tilley, on the phone still, who says YES much louder into the phone)

Lucas:O.K.

Tilley:(...still on the phone.)...well. we'll see you...

Page:I think there are too many issues here...something about (unintelligible)..the fact...and the second issue is how...

THE SECOND DISRUPTION OF THE ELECTRONIC RECORD OCCURS HERE, OVER THE SECOND ISSUE.THE SKIP IN THIS SPOT MAY BE ANSWERED IN THE RETORT, OR MAY BE AN EDIT OUT OF SOME OTHER MATERIAL

Lucas:...there was a very wide latitude given me, for a number of reasons.Ah, A), I was older, so the tendency to supervise me was not that much,...B) Most of the teachers that I had who were co-operating teachers trusted me because I had a maturity that most (student) teachers don't, C) there was no procedure down there for (student teachers) as you know,... that, we were trying to talk about setting one (procedure) up, D) Dr. Wilgoren never seemed to have a

problem , he was informed of the changes when we moved from what he had done previously to this video/Civil War thing...and he knew how long it was gonna run, and he was quite well aware, and everything was fine , he went in and observed it (the new format), he went and did it while I was out two days...NOT A WORD (of complaint)...not a word until the grading system (of the student teacher) began to run contrary to what he (Wilgoren) had marked these kids (previously) at...kids that were "F" at the mid-semester mark were "A" on my marking sheets...and he didn't disagree with the way that I marked it, he NEVER disagreed with my marking sheets or my percentages, or how I perceived the work to be valued, he only said that there

were missing homework assignments, and that's why these kids (grades) were being dropped.

Page:You had told this to Dick Lussier. What beyond that was your responsibility to....

Lucas:My responsibility to recall what was happening and being accessory to the fact...

Story:What more did you have to do than report this to Lussier??Wasn't that enough...

Lucas:Yes, now I'd don't disagree with you on that part.If I didn't...if I didn't perceive, if I didn't know that that, that that in my mind was a criminal activity, I would have been fine, I would have stopped right there (and been satisfied with the report to Lussier)....

Page:But I think what Carol (Story) is trying to say is that (unintelligible)..after that

....(unintelligible)...based on what you (unintelligible)...what you think is happening...(unintelligible)...

Lucas:Well...in a way yes, and in a way no...

Page:So he's (Lussier) the one I had the initial contact with about how this (internship) was going to work...and some suggestions about observing and lesson plans and that kind of thing...he's the person that I met with...

Lucas:Ma'am, I personally feel that if a citizen in this country finds that, in their experience, a law has been violated, and somebody's civil rights have been violated, they should do whatever they can, A) attempt to redress that, but B) most importantly, not get sucked up it...

Page: But aren't they having an internal investigation right now???

Lucas: Yeh, they are Now, yes ma'am.

Page:O.K. So you..

Lucas: But that, but that doesn't absolve me because Mr. Wilgoren, if he is anything, if he, if he is anywhere like I have portrayed him, is gonna dump this problem on me.I NOW become the villain. I'm the villain no matter what happens here.

Page:What is he going to say??

Lucas: He's going to say...he's going to say that A) um , I threw the papers in the trash, because the kids don't have them, the kids are gonna get up on the,...in front of the investigation, and say no, we never got them (the homework assignments), and they're going to say that this guy Lucas, pitched this stuff.O.K.??You don't deserve those grades.You didn't work for them.You didn't earn those. He disregarded what I told him to do...we've been at odds on this all the way through...now..I'm...

I'm...I'm, I'm in a lose-lose scenario now...

Page:Been at odds with what all the way through???

Lucas: Wilgorem will say that he and I never got along...he's going to say he's been trying to supervise me...his problem is now that here's somebody who's supposed to be...who's, who's turned out to be a problem but he hasn't got...he has no supervisory notes on.If he's my co-operating teacher, shouldn't he have been in there more frequently????...than twice????

Tilley:Depends.

Lucas:Depends???Well, if he's having a problem, and the grades are all out of wack,...

Tilley:Well...

Lucas:And, and the homework isn't getting passed in...

Tilley:There's some other facts...

Lucas:heh???

Tilley:That I don't think you're aware of...

Lucas: Well, I would like to know them if you can disclose them to me...

Tilley:Well, I'm, I'm not in any position to do that...

Lucas:Humph. I mean because, at this point...

Tilley:I think, I think, think they, they, they've heard what your perception was ...you think that you, I think in some cases that you're speculating....

Lucas: As far as what am I speculating, Herb?

Tilley: In terms of, of what people might say about you.And if they do, so be it.I mean, your behavior warrants somethin', doe'n't?

Lucas:Oh, absolutely.

Tilley:Do you think you've operated in a professional manner?

Lucas:Absolutely.

Tilley:You do?

Lucas:Yes I do.

Tilley:I see. Did you send those letters to the parents?

Lucas: Yes, I did.

Tilley:Is that within the policies of the college or the school???

Lucas:I have no idea.

Tilley:Is that operating within the organizational behavior of Spaulding High School?

Lucas:I have no idea, Herb.

Story:Is that behaving within a professional, ethical manner?

Lucas: Yes, ma'am.

Tilley:(muffled laughter/cough)

Story:I don't think so!

Lucas:Well, then I've never had a course on ethics where you walk by somebody's violation and you don't...you don't cover your own rights. I have some rights here, and some liabilities have

been laid out against me. I'm looking to cover my liabilities...Dr. Story.

Tilley:I think you've created some liabilities....

Lucas: I may have done that, I may have done that, Herb, but I'm looking at it from my perspective...O.K.???....I...I have a supervisor who is not available, I have you who has talked to me once, I have Dick Lussier who is sort of fudging around on the whole thing, an I have what's in my mind a serious, serious ethical problem.Where am I standing on this???At the same time, if I go along with this...the same point after we bring the grades in he's (Wilgoren) asked three times for an evaluation sheet...this guy is not unclever...and I go back...and he goes:...and but now that we've got the grading things out of the way if I could have your evaluation sheet (unintelligible)...so he wasn't

upset about the grades, he just arbitrarily changed them...

Page:Evaluation sheet????

Lucas:Of my performance...

Page:He asked...oh...he asked to write one???

Lucas:He asked me to get one from the college so he could evaluate me and send it to the college...and I said gee, I'm not really sure, that I hadn't seen one, but the next time I see ...Marilyn Page I will remind her..and see what...I said I don't even know that one exists,....

Story:Well, first of all that was ... (unintelligible) of me...

Lucas:Marilyn Page...when I talked to Wilgoren...

Story:That's when (unintelligible) ...that I will not accept at all...

Lucas: (Unintelligible)...when Dr. Page was out finishing her dissertation...

Story:That was one week...

Page:(Unintelligible)...

Lucas: THAT WAS THE WEEK WE WERE TALKING ABOUT...

Story:There was somebody available, and if she wasn't, then you have a Department Chair to come to...and...

Lucas:And I spoke to you, Dr. Tilley, that Monday (30 Mar 92)...

Story: Dr. Tilley is not your Department Chair...I am...

Lucas: Well, nobody sent me around, ma'am.I'm, I'm working in a system and you're assuming that I know all the steps of the ladder...and Dr. Tilley didn't say: Wait a minute, lets go see Dr. Story, let's go see this, let's go talk to this person...

Story:Well, fortunately Herb talked to me about what was going on, cause I knew what was going on...

Tilley:I think what was (unintelligible) to the school is that, that there is no, indication that you tried to work it out within the school, that ....

Lucas:Well, I....

Tilley:..that perhaps you didn't talk to Walgren (sic) or whatever his name is...

Lucas: Wilgoren???

Tilley...Wilgoren...you did not talk to the Department Chair..(Third phone interruption, rings several times)

Lucas:He was sick and unavailable....

Tilley: You did not talk to the principal...and if she said that you...

Lucas: I,...I...,I'd been trying desperately to make an appointment with her, Herb...

Tilley:(unintelligible)...well, that's another matter....

Page: I think what Dr. Tilley is saying is that if you could have gotten someone...

Tilley:(On phone)Hi,...

Page:...(Unintelligible, drowned out by Tilley on the telephone)...you should have waited...

Tilley:...Tom....I'm right in the middle of a meeting, Tom...yeah...

Page:(unintelligible)...

Lucas: I felt incredibly isolated, and incredibly out on my own, and as I thought about it over the weekend this business of being accessory to the fact was my judgement. My perception...

Tilley:(On phone) O.K....O.K...

Lucas:...of what happened may not be the truth, or it may not be theirs, but I can only operate under my own perceptions when in fact I don't have procedure manuals, I don't have next steps to go to, I don't have people to talk to with and come back to me...Dick Lussier was a nice guy, but do you know where it went with Dick Lussier???I sort of went.....(sucking crash sound)...like so...

Pag:What was the ....???

Tilley:(On phone) O.K....O.K. (hangs up)

Lucas: And then I spoke with...

Page:Rush???What was the rush, the big rush...(unintelligible)...when people were not available...right that minute????

Lucas:Oh...there wasn't a hugh rush ...there was just,...just a vacuum of anybody to go to next. When I spoke to Mr. Lussier which was the Monday that the grading was finalized, which was..

Page:(Unintelligible)...after...(Unintelligible)...???

Lucas: No...that was last Monday...when it finally became apparent from my viewpoint that these kids were getting chopped because they had done well, not because they had done poorly, ah ...what's the date...the 30th...that's the same date that I talked to you (directed to Tilley now off the phone)...yeah...on March 30th...

Page: March the 30th what??That's when they were final???

Lucas:That's when the grades were finalized, and that's when I spoke with Dick Lussier...

Page:(Unintelligible)The week before that...all these were finalized together???

Lucas:No, this didn't occur until ummm... the 20???, (27 Mar 92) the Friday before that...I had no inkling about what was...he just said come on in and let's co-ordinate the grades. I'd already co-ordinated grades with two other instructors. Co-ordinating grades we're checking to see ...in one case we split it half and half....he had half the time and I had half the time ...hey ...add two (percentage) points here or agree on virtually everything...in the case of, umm ...Jerry ...ah ...ummmm ...DesMaris, with the Vermont History class...we were four percentage points off on seventeen kids...that's how easy that was!!!When I went to Dick Lussier

and we put the grades together (for Lussier's class), there was no question about the grades.

Page:On March 30th, these grades were...

Lucas:They were supposed to be finalized on the 27th...

Page:What happened on that week? That was the week that I was not here...what did you do...?I didn't talk to you at all that week.

Lucas: That's right. I talked to...I talked to Dr. Tilley....and then I talked to Dick Lussier...and I said what do you think we should do....and he said:let me go check it out...and then on Wednesday I said:Well, what do you think is goin' on here, Dick??Because these report cards are coming out tomorrow (2 Apr 92)...on Thursday...and I know what is happening here...

Tilley:The prescriptions I made to ya was 1) do you have documentation?And you said yes..

Lucas:Yes I do!!!

Tilley:And I said go on and work with your co-operating teacher...

Lucas:That's NOT the statement you made to me, Dr. Tilley...

Tilley:(unintelligible)

Lucas:You said, ...to ask me id I had documented evidence....

Tilley:...and go and work with that co-operating teacher...and if not get to the principal...

Lucas:That's NOT the statement that I got from you, sir.I'm sorry...

Tilley: What..what did you think I said?

Lucas:I don't think you said anything at that point...you simply asked me if I had evidence...if I had documents...

Tilley:...And I said: do you have documentation?I said: You go and work things out...

Lucas:I said yes...and I don't believe the conversation went in that direction...

Tilley:It certainly did!

Lucas:no...I don't remember it and I don't recall it ...

Tilley:O.K....

Tilley; (unintelligible)...a problem...

Lucas:That may be , yes,sir..'cause my sense was there was no avenue...I had to go find the principal if I could...I had to...I said :Should I go to Joe Maiola (high school department head) to Mr. Lussier, and he (Lussier) said:No, let me talk to Joe Maiola...everybody wants to politics this around...so that...

Tilley: It's not politics....it's...we wanted to ...we want it to be an experience that results in people doing what they say they're going to do when they start student teaching..

Lucas: (Unintelligible)...

Tilley:...that is abide by the policies of the school where you work at...

Lucas:I understand that, Herb....

Tilley:And you haven't!!!

Lucas: I HAVE NO POLICY GUIDELINES!!!!I don't see where I have broken any policies...

Lucas: You've worked in organizations all your life....

Lucas:I SURE HAVE!!!!

Tilley: What would happen if you were in business and this took place now???

Lucas: If...if I did this???I'd be sitting in a room like this with people asking.....I'm...I'm not surprised that this is happening...it's happened in the military before, too...you make choices...you make choices based on your own ethics and morals and what you perceive to be the greater good...I DIDN'T WANT THIS MESS...I didn't ask for this cup to come my way...I'm not looking out to get this guy...I just wanted to teach, and I was doing what I perceived to be a very decent job of the whole thing, and then all of a sudden....

Tilley:..that's not the issue, I don't think that issue....

Lucas: The all of a sudden this is pulled...and I'm trying to solve the problem...and I sit down and say:Wait a minute...some people have some rights here...

Tilley:...there's that word...

Lucas:...including me!Including my rights.

Tilley:There's that word...like saying "...this is pulled..."

Lucas:This is...?

Tilley: This is pulled!!!That's just what you just finished saying...

Lucas:This is pulled?PULLED OUT!!!YEAH!!!Well...yeah..I had no inkling of this. I thought we were going to co-ordinate grades. I didn't think we were going to drop (students) 2.0 grade points on 19 homework assignments that I had no knowledge of.

Tilley:But he did!

Lucas:YEAH.AND NOW I KNOW WHERE THEY CAME FROM!!!

Tilley:Well, he's got...he's...he's the licensed teacher to make that judgement.

Lucas:..but...

Tilley:If he says they're there, they're there.

Lucas: Don't you think that I should have been informed at the beginning that he was going to pass out homework assignments of which I would have no knowledge ??

Story: Not necessarily....it's his discretion...

Lucas: Do you think I would have worked...would you have worked in a situation where your co-operating teacher was passing out homework unknown to you...???

Tilley:We..We've all experienced ...ah....

Story:...similar situations...

Tilley:...similar situations. Some of it...some of it was known, some of it was not known. The teacher also had some other kind of criteria they were using for grading...in my own student teaching situations...didn't suit me at all...I didn't like it a bit and I told him so...but it didn't change a thing.He just looked up at me and smiled and said:"That's the way it is..."

Lucas:I...I...I don't mind that, Herb...I..I..have no problem with that...but...

Tilley:Isn't that what's happening here?

Lucas:Well, I guess so. But I guess nobody felt the need to tell me that somehow as part of this experience there is an experiment going on with 19 homework assignments that...that may or may not be affecting what's going on in the class....

Story???Page???:(probably Story) (unintelligible)...with the ultimate principal who's in charge...the fact that...

Lucas:(Unintelligible)...I'm not disagreeing with you...about the person who's in charge...I...I...acquiesced to his grades, ma'am..I simply grieved this with him, and grieved this in the best way that I knew how...

Tilley:Ha..hahahaha....

Story:But maybe that...I..I think that's the problem John...because...you just... you just flew with it...

Lucas:I DIDN'T just fly with it..

Page:Well, well why did the letters have to get out on Monday?Why these letters...you know that even teachers at the school usually have to show letters to the principal.

Lucas: Again, I ....my concern is ...that it's my perception as an adult American that civil rights violations

may have occurred ....that letter simply said that a mistake was made...and I'm quite willing to walk in and say that I made the mistake...I made a mistake sending the letter, but I made a mistake on the grading...I didn't say...that letter doesn't say that Dr. Wilgoren made a mistake...

Story: And it does say that the grades are going to be corrected...

Lucas: RIGHT!!!!The other thing you can say is....WHOA...WHOA, WHOA, the other thing you can say, Herb...is that, is that, is that the grades are corrected and the mistake was made by the student teacher...I don't mind how that backs out...

Tilley: They're not going to correct any grades...

Lucas:Huh?

Tilley:There are no grades to correct!!

Lucas: No. Then I made a mistake...

Tilley:Big mistake....

Lucas:O.K.!

Tilley:Maybe a career mistake....

Lucas: Perhaps! Alright I...I have a sense of moral obligation to myself, and to what I perceived to be, you know, right, and fair, and just...and I know, I know the hot seat that I'm on...I know what this means to my career.I've got twenty-five thousand dollars riding on this...I don't want the damage...I didn't ask for it.If you think I went out looking to screw myself out of a year's hard work...

Tilley:You did a pretty good job at it...I mean there wouldn't be any...if any of us here at the college did that...we would, we would have total insubordination...

Lucas: I..I understand...but you're all assuming that I have full knowledge of all the operating procedures of all the places that I've been, and that I've

that...that if somebody...if somebody does this sort of thing in business...that is, if somebody were to do what I saw and perceived to be that...I can't go along with that because I am accessory to the fact...
Page: (Unintelligible)..but my first inclination would be ...I would check it out with care...I wouldn't write a letta...that would hold outside this institution...without checking it out first...no matter what I felt.
Lucas:I'm...I'm, I'm not a college institution person.
Story and Page together
:(Unintelligible)..
Then Story:..ah, happened...you speak up first...(Unintelligible)...
Tilley:And after talking with the principal,they said that they could, have worked out anything internal if they could have had a chance to know about it...anything...

Lucas:I..I..I'd been giving it to them for a week...

Tilley: In fact.they've had student teachers for many, many times and they said :sometimes they get very excited about their teaching and they don't always work...

Lucas: I know ....

Tilley:...with the school as they would like have...they can work with all that...when you go public, that's another thing....(unintelligible)...that says:John, you're operating as an individual, without anybody's...

Lucas:My..my...my concern for that was...was...was to get me some protection for my liabilities...the man said I didn't turn....that I didn't grade on 19 assignments...and that means, that what he will ultimately say is that he gave them to me and I threw them away...

Tilley: Naaawwww...he won't say that...

Lucas:Well..well..wha...what's he gonna do with the 19...how were the 19 assignments passed out, and how were they passed out so that I was completely unaware of them???

Tilley:That's his business!Totally his business!!!It's a private matter!!For every individual student.Then it's his responsibility on how he grades those students.As a student teacher, it's not a (unintelligible) matter.Except to turn your grades over to the co-operating teacher and say that these are my grades.And how that's gonna come out on the grade sheet, that's not, that's not your responsibility at all .(Unintel-ligible)...you've just provided part of the picture...of what that teacher knows about these students...

Lucas:So, in other words, whatever he perceives about them past the semester line from previous semesters is included...????

Tilley:I don't think that...

Lucas:...could in fact affect whatever grade they have...???

Tilley:What ever his grading policies are...that...that's an individual matter...but he has to stand for them...not you...

Lucas:Well, the grades are out...I guess he does stand for them...

Tilley:Yeah...

Lucas:I mean that's what you've said...

Tilley: Now the school's part is just to working some things out with the parents to help them understand...

Lucas:O.K.

Tilley:...that's the way...that's the way the policy handbook here talks about it...that's the way that every organi-zation that I know I've ever worked in works.And that's certainly how you were taught in the methods class...as a guest of the org...of the school that you teach at.

Lucas:...over here...at the end...

Story: (unrecorded)

Lucas:...I completely understand that you're a guest of the school, ma'am.I'm...I'm...I'm...I'm...maybe it's selfish, or impulsive, or whatever you are, but at the point that occurred, and there seemed to be no avenue of reproach, I'm concerned with my own, personal legal liability.And since I could not get access to the people who I needed to get access to,and I did make attempts, you know I made attempts to do that, at that point, I make a judgement as to whether I'm accessory to or after the fact, accessory after the fact,cause that's, that's my personal judgement ...I'll live with it Herb...it may be a wrong call, it may be a really stupid, screwy thing to do...but if I was in the same position again, without this kind of meeting...without...the same exact thing...that's the way I would handle

it...and there have also been institutions where people make....say, just follow the orders here...things are fine, we'll be O.K.I've been asked to commit a whole series of acts,by institutions, which are grossly unacceptable to me.Up to and including gross amounts of interstate bank fraud,up to and including murder.So you must understand, that coming from my 42b ackground, institutions are not always correct.

Page:John, I don't think we're saying that there are procedures at other institutions...

Lucas: I did...I tried to ...I did use all of the procedures that were available to me...

Page:But I don't think you waited long enough, John. I don't know Dick well enough to say...that you went to him...

Lucas:..that there were several...

Page:...at the different times, that you...

Lucas: Yes, I did, ma'am...

Page:...these are very busy people, and to expect that just like that...

Lucas:I didn't expect it to happen in the afternoon...but I expected to be able to get in and talk...because...let me go talk to Joe...I expected to be able to see Joe (Maiola)...I expected to be able to get in to see the principal, not particularly on this matter, but just to feel her out on a few things so I could get some sense of being...you know....in this...and as a part of this...

Tilley:Well, what up front was the urgency???Why couldn't it...couldn't it have waited two weeks???Three weeks????Grades can always be adjusted if they're incorrect.

Lucas: YEAH! But apparently you said that the grades were his and the call is his...

Tilley: It is...

Lucas:So they're not adjustable and nothing is going to happen, and that's where it is!

Tilley:I mean in terms of your desiring to move as fast as you did: BING! BING! BING!!

Lucas:I'm concerned with my professional liability as a student-teacher because now what we have...

Tilley: There's none!!!

Lucas:huh???

Tilley: There's NONE!!!

Lucas:Well,...there is none either.Because now the man can say that:I looked at his marks and he failed to mark down 19 assignments which I passed out to the students...

Tilley: That's his call!!

Lucas:So now...now I'm the guy who goes in and teaches class and takes homework assignments and throws them in the crapper and inflates grades on students???

Tilley: NOOOOOOhhh!!

Lucas: Well, it's in that letter, Herb, and it's...it's one of the things that I'm really concerned about...

Tilley: What letter?

Lucas: The one that I just passed around to you...

Page: The letter that you wrote...???

Lucas: The letter that I wrote? No..no,no...the one I passed out this morning...if you'll look...look in, in, in that...

Tilley:What letter???

Lucas:That...that...not a letter, just the 8 page handout...

Tilley:But didn't you write this?

Lucas:Yes!!To you this morning...

Tilley:Aren't these your perceptions???

Lucas:YES!!!They're my perceptions. That's how I operated.How else am I supposed to operate???The man...I, I graded these...these kids at a certain grade level...now he says I'm sorry, we're going to back the grades down because of 19 missed homework assignments, and then I say: O.K. fine, where are they (the 19 assignments)???, he says, oh, I gave them to you!What do you mean you gave them to me???Oh, sure, didn't you, didn't you mark them down??? Didn't you give them out???Where are these homework assignments???He goes to the kids and the kids say: Oh, no, we never got them. So now here's Mr. Lucas looking real good at Johnson State College with all these nice, high marks for the kids, trying to fluff up his grades over there at Spaulding High School,

and now he's caught by his co-operating teacher...

Page:Is that what you (unintelligible) you'd look real good at Johnson if your students (unintelligible)?

Lucas:No. What, what I have here is a grading scheme which is grossly out of whack with what the students' capacities are, what the students are worth.And I've done that by taking assignments which he's given off his syllabus to me, and shitcanning them! In other words, his assignments don't exist, we're just going to work with my assignments, and that's the only way it runs.

Tilley:These are legal things to you but...what...what...what do you think they would do to you???

Lucas:I supposed they'd say: this guy is a fraud!!

Tilley:That's kind of interesting...ha..ha...hahahahahahah!!

Lucas: HERB!!!My co-operating teacher gives me 19 pieces of homework and I throw it in the can and...and...and there's no liability...

Tilley:He's not saying...

Story: He's not saying that at all...

Lucas: Well, I don't see the 19 pieces of homework Carol, that's the thing...

Tilley:I don't...I don't....I don't know as you'll ever see 'em...

Story:You may never see 'em...

Tilley:Nobody else will!And he may have grades for them.

Lucas: I wish when we had the process course that we would talk about absolute authority of the co-operating teacher to INVENT reasons, INVENT reasons...for making grades the way they are....

Tilley:..(unintelligible)...I think that...

Story:...that's your supposition....

Tilley: ...you've got to be careful...about using...

Story:..(unintelligible)...

Lucas: MA'AM, if I don't see the homework and I SPEND ALL BUT FOUR DAYS in that class handing out the homework...

Story:John, did the marking period start on exactly the same day that you started?

Lucas: Yes, it did...

Story:Is that what you're saying???

Lucas: Yes, it did...

Story:...that still doesn't, doesn't mean that there aren't some things that he knows about those kids, or other (unintelligible) such and such as...

THIS IS THE THIRD SUBSTANTIVE DISCONNECT IN THE INTEGRITY OF THE TAPE TRANSCRIBED.ON BALANCE, THERE SEEM TO BE CONSTANT,MINOR DISRUPTIONS IN THE DIALOGUE, WITH WORDS CUT IN HALF, CONVERSATIONS MINIMALLY DISRUPTED, ETC.WHY THESE EXIST IS SPECULATIVE.THAT APPROXIMATELY THIRTY MINUTES OF

RECORDING, WITH OR WITHOUT CONVERSATION, IS MISSING, IS NOT SPECULATIVE.jl

Lucas:I...I'm...I'm saying that he had, but all I'm saying is :his rationale for all his changes with the 19 homework assignments leaves me with a double-edged liability going on here.

Tilley:NAAAAWWWW...

Story:No...

Page:....(Unintelligible)...you're not responsible for that (unintelligible)

....

Tilley: You're not responsible. You're not liable for those kids.

Page: you...didn't....

Lucas:No, but I'm liable to my liability toward my licensing and certificate process, and here I have a guy who's saying that 19 pieces of homework went in and this (student) teacher knew nothing about them .Do you see what I'm

saying? I'm supposed to be student teaching,...

Story: ...If that's the only negative comment, then I wouldn't ....I probably even ignore it....(gap)...if that's the only concern, that, that this student teacher did not mark the same way I did...

Lucas: But it's a question of how cognizant am I when we have forty-five days, there's nineteen homework assignments missing, and I know nothing about them, Carol?????How competent a person...??????

Story:You just, you just....told me of two other teachers that you worked with that would ...support the grades you had given....

Tilley:...besides....

Story:...If you were concerned...about what this one teacher's going to say, you've got two others that you've co-ordinated grades with who ....That

they're evidence of quite a lot of bit of your competence, not of your incompetence...

Lucas: Yeah, I suppose it is...but all you have to do is have is of those things up here, one little check mark on your ....whatever...

Story: (unintelligible)...

Lucas: Carol, Carol...in Vermont, Vermont...that at least my experience has been...that...that...

Tilley: I don't see why a person would make such a monumental case out of something where you had not...where you did not have all the facts...and to jump to that conclusion...ah...into a situation, acting as if you were in charge....and acting on your own...without any,any consultation at the school, which is the place that has the policies, and knowing that you would normally get approval before you'd send

out public information, or call the press...

Lucas:I didn't call the press!!!!

Tilley:O.K. ...(unintelligible)...

Lucas: That was completely unconnected.

Tilley: O.K.

Lucas:I...stand...

Tilley:...

Lucas:...I stand....you can check and see when the photographer went down, Herb...the photographer was there before the letters were sent...

Tilley: That's a good picture...

Lucas:...It was a good picture...they're are good kids...I...I didn't, didn't want this to happen...but it has happened , and I have to bear, bear the responsibilities for my actions...I believe in that...

Tilley:Well,...we'll discuss it.

Lucas: O.K. Could I have those (8 page reports) all signed back around, and you can keep one of those copies for yourself...

Story: I won't sign (unintelligible)...

Tilley:....I won't sign this...

Lucas: O.K.

Page: I'm really not sure this is...????

Tilley:I'm really not sure what this (report) is...????

Lucas:O.K....

Tilley....maybe if we could keep one...???

Lucas: You're certainly welcome to keep them all...I've...I'm...I have no problem with that...ah...I mean it's my explanation actually...of my perceptions of what happened and my issues were and all of that ...that's why I made it up...

Tilley:..we certainly want to be fair and understanding...

Lucas: Oh, yeah.....I'm not trying to hide anything...

Tilley:....as the result, I sometimes (Unintelligible)...

Page:What was...(unintelligible)...?

Lucas:....I have no idea.

Page:...what they would do with that...????

Lucas:Ma'am, I didn't know an investigation would even begin.

Page: I thought that's what they told you???There's an internal investigation...

Lucas:Yes they told me that ...Tuesday ...morning...when I was...when I got suspended.That's the only time I knew that an investigation had begun...

Tilley: Uh..when I...when I talked to the principal they said that...I, I asked the question: Why was there a discrepancy in the grades?

Lucas: Un huh...

Tilley: ...and they said that the teacher had additional information to put into those grades...they were going to....going to look into it...

Lucas: well....seems o.k. then...

Tilley: Yeah...

Lucas: That's the best thing here...I don't think that we have a ...terribly big problem, actually...

Lucas:Well...thank you for your time...

Tilley: Thank you, John...

Door closes, Undifferentiated noise for several seconds, then:

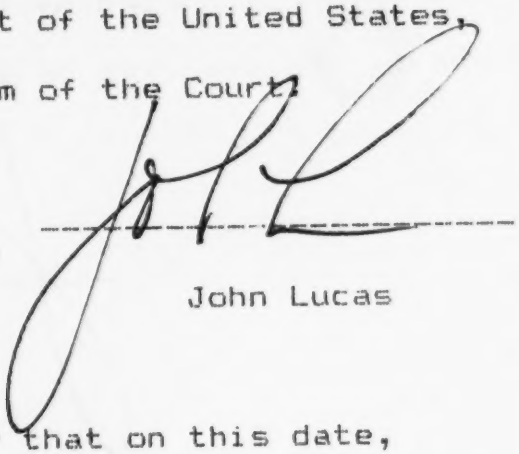
Tilley:...whistling.....

Blank for several seconds on the tape...then:

Lucas: ...this is minimal, minimal ...no....(unintelligible)...they're gonna...(unintelligible)...

THE TAPE ENDS AT THIS POINT. THE REMAINDER OF THE MARKED SIDE IS BLANK, AS IS THE SECOND SIDE OF THE TAPE. IN ALL, THERE ARE ALMOST 41 MINUTES OF RECORDED CONVERSATIONS AND PAUSES. THIS IS APPROXIMATELY 33 MINUTES LESS THAN THE ACTUAL TIME OF THE MEETING. WHILE ALLOWANCES CAN BE MADE FOR LATE BEGINNINGS AND EARLY ENDINGS, AS WELL AS FOR TAPE SPEED DIFFERENTIAL (TAPE DOES NOT RUN AT TRUE, CLOCK SPEED, BUT SLIGHTLY FASTER), THERE IS NO DOUBT IN MY MIND THAT PORTIONS HAVE BEEN CUT FROM THIS RECORD. WHAT IS MISSING MAY NEVER BE RECOVERED, AS THIS RECORD WAS "LOST" FOR MORE THAN TWO YEARS. HOWEVER, WHAT REMAINS SEEMS TRUE AND ACCURATE, AND IS OF SUCH SIGNIFICANCE TO THE ISSUES AS TO EXPLAIN WHY THIS RECORD WAS "LOST" IN THE FIRST PLACE.

Signed this day, the 18th of January,, 1995, in Morrisville, Vermont, of his free hand and deed,by the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court.



John Lucas

I Hereby certify that on this date, the 19th of January, 1995,the undersigned pro-se teacher-student, petitioner to the Supreme Court of the United States, October 1994 term of the Court, did deliver pursuant the statures,four (4) copies of this Supplementary Brief and Appendix to his Writ of Certiorari,plus an additional copy, five (5) in all, to Michael Harris,Esq., of the firm Sutherland and Collins, by 1st Class